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A NEW LOOK AT TAXATION

Taxes, Revenues, and the "Laffer Curve" — *Jude Wanniski*

The Roller-Coaster Income Tax — *Martin Anderson*

Should Judges Administer Social Services? — *Nathan Glazer*

Moral Education in the Schools — *William J. Bennett & Edwin J. Delattre*

A New Interpretation of the I.Q. Controversy — *Brigitte Berger*

Regulation, Social Policy, and Class Conflict — *Paul H. Weaver*

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Editorial Office
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Subscription Office
The Public Interest, Box 542,
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Taxes, revenues, and the "Laffer curve"

JUDE WANNISKI

As Arthur Laffer has noted, "There are always two tax rates that yield the same revenues." When an aide to President Gerald Ford asked him once to elaborate, Laffer (who is Professor of Business Economics at the University of Southern California) drew a simple curve, shown on the next page, to illustrate his point. The point, too, is simple enough—though, like so many simple points, it is also powerful in its implications.

When the tax rate is 100 percent, all production ceases in the money economy (as distinct from the barter economy, which exists largely to escape taxation). People will not work in the money economy if all the fruits of their labors are confiscated by the government. And because production ceases, there is nothing for the 100-percent rate to confiscate, so government revenues are zero.

On the other hand, if the tax rate is zero, people can keep 100 percent of what they produce in the money economy. There is no governmental "wedge" between earnings and after-tax income, and thus no governmental barrier to production. Production is therefore

This article is adapted from the author's forthcoming book, The Way the World Works: How Economies Fail, and Succeed, *to be published by Basic Books in the spring.*

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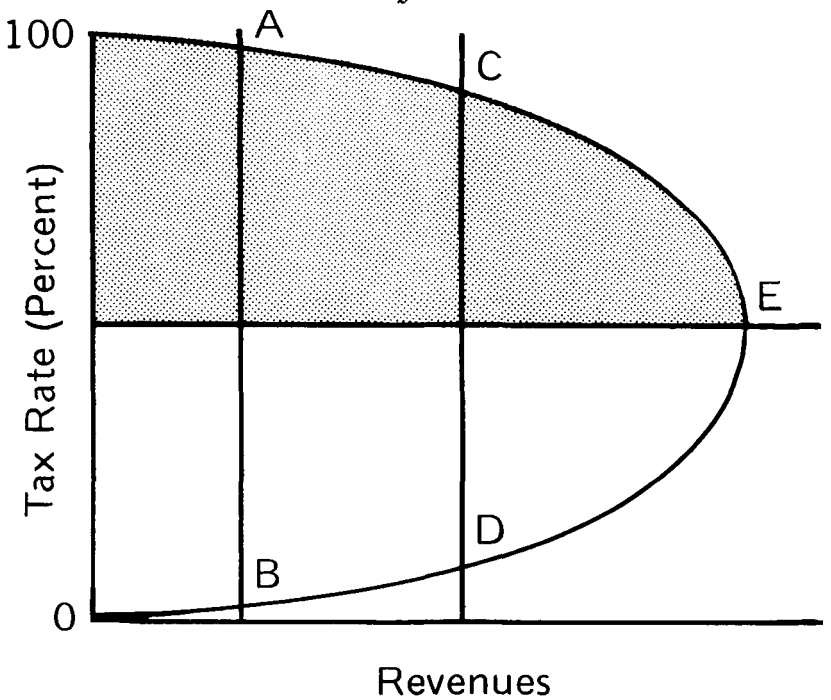
The Laffer Curve



maximized, and the output of the money economy is limited only by the desire of workers for leisure. But because the tax rate is zero, government revenues are again zero, and there can be no government. So at a 0-percent tax rate the economy is in a state of anarchy, and at a 100-percent tax rate the economy is functioning entirely through barter.

In between lies the curve. If the government reduces its rate to something less than 100 percent, say to point A, some segment of the barter economy will be able to gain so many efficiencies by being in the money economy that, even with near-confiscatory tax rates, after-tax production would still exceed that of the barter economy. Production will start up, and revenues will flow into the government treasury. By lowering the tax rate, we find an increase in revenues.

On the bottom end of the curve, the same thing is happening. If people feel that they need a minimal government and thus institute a low tax rate, some segment of the economy, finding that the marginal loss of income exceeds the efficiencies gained in the money economy, is shifted into either barter or leisure. But with that tax rate, revenues do flow into the government treasury. This is the situation at point B. Point A represents a very high tax rate and very

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low production. Point B represents a very low tax rate and very high production. Yet they both yield the same revenue to the government.

The same is true of points C and D. The government finds that by a further lowering of the tax rate, say from point A to point C, revenues increase with the further expansion of output. And by raising the tax rate, say from point B to point D, revenues also increase, by the same amount.

Revenues and production are maximized at point E. If, at point E, the government lowers the tax rate again, output will increase, but revenues will fall. And if, at point E, the tax rate is raised, both output and revenue will decline. The shaded area is *the prohibitive range for government,* where rates are unnecessarily high and can be reduced with gains in *both* output and revenue.

Tax rates and tax revenues

The next important thing to observe is that, except for the 0-percent and 100-percent rates, there are no numbers along the "Laffer curve." Point E is not 50 percent, although it may be, but rather a variable number: *It is the point at which the electorate desires to be taxed.* At points B and D, the electorate desires more government goods and services and is willing—without reducing its productivity—to pay the higher rates consistent with the revenues at point E. And at points A and C, the electorate desires more private goods and services in the money economy, and wishes to pay the lower rates consistent with the revenues at point E. It is the task of the statesman to determine the location of point E, and follow its variations as closely as possible.

This is true whether the political leader heads a nation or a family. The father who disciplines his son at point A, imposing harsh penalties for violating both major and minor rules, only invites sullen rebellion, stealth, and lying (tax evasion, on the national level). The permissive father who disciplines casually at point B invites open, reckless rebellion: His son's independence and relatively unfettered growth comes at the expense of the rest of the family. The wise parent seeks point E, which will probably vary from one child to another, from son to daughter.

For the political leader on the national level, point E can represent a very low or a very high number. When the nation is at war, point E can approach 100 percent. At the siege of Leningrad in World War II, for example, the people of the city produced for

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900 days at tax rates approaching 100 percent. Russian soldiers and civilians worked to their physical limits, receiving as "pay" only the barest of rations. Had the citizens of Leningrad not wished to be taxed at that high rate, which was required to hold off the Nazi army, the city would have fallen.

The number represented by point E will change abruptly if the nation is at war one day and at peace the next. The electorate's demand for military goods and services from the government will fall sharply; the electorate will therefore desire to be taxed at a lower rate. If rates are not lowered consistent with this new lower level of demand, output will fall to some level consistent with a point along the prohibitive side of the "Laffer curve." Following World War I, for example, the wartime tax rates were left in place and greatly contributed to the recession of 1919-20. Warren G. Harding ran for President in 1920 on a slogan promising a "return to normalcy" regarding tax rates; he was elected in a landslide. The subsequent rolling back of the rates ushered in the economic expansion of the "Roaring Twenties." After World War II, wartime tax rates were quickly reduced, and the American economy enjoyed a smooth transition to peacetime. In Japan and West Germany, however, there was no adjustment of the rates; as a result, postwar economic recovery was delayed. Germany's recovery began in 1948, when personal income-tax rates were reduced under Finance Minister Ludwig Erhard, and much of the government regulation of commerce came to an end. Japan's recovery did not begin until 1950, when wartime tax rates were finally rolled back. In each case, reduced *rates* produced increased *revenues* for the government. The political leader must fully appreciate the distinction between tax rates and tax revenues to discern the desires of the electorate.

The easiest way for a political leader to determine whether an increase in rates will produce more rather than less revenues is to put the proposition to the electorate. It is not enough for the politician to propose an increase from, say, point B to point D on the curve. He must also specify how the anticipated revenues will be spent. When voters approve a bond issue for schools, highways, or bridges, they are explicitly telling the politician that they are willing to pay the high tax rates required to finance the bonds. In rejecting a bond issue, however, the electorate is not necessarily telling the politician that taxes are already high enough, or that point E (or beyond) has been reached. The only message is that the proposed tax rates are too high a price to pay for the specific goods and services offered by the government.

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Only a tiny fraction of all government expenditures are determined in this fashion, to be sure. Most judgments regarding tax rates and expenditures are made by individual politicians. Andrew Mellon became a national hero for engineering the rate reductions of the 1920's, and was called "the greatest Treasury Secretary since Alexander Hamilton." The financial policies of Ludwig Erhard were responsible for what was hailed as "an economic miracle"—the postwar recovery of Germany. Throughout history, however, it has been the exception rather than the rule that politicians, by accident or design, have sought to increase revenues by lowering rates.

Work vs. productivity

The idea behind the "Laffer curve" is no doubt as old as civilization, but unfortunately politicians have always had trouble grasping it. In his essay, *Of Taxes,* written in 1756, David Hume pondered the problem:

> Exorbitant taxes, like extreme necessity, destroy industry by producing despair; and even before they reach this pitch, they raise the wages of the labourer and manufacturer, and heighten the price of all commodities. An attentive disinterested legislature will observe the point when the emolument ceases, and the prejudice begins. But as the contrary character is much more common, 'tis to be feared that taxes all over Europe are multiplying to such a degree as will entirely crush all art and industry; tho' perhaps, their first increase, together with other circumstances, might have contributed to the growth of these advantages.

The chief reason politicians and economists throughout history have failed to grasp the idea behind the "Laffer curve" is their confusion of work and productivity. Through both introspection and observation, the politician understands that when tax rates are raised, there is a tendency to work harder and longer to maintain after-tax income. What is not so apparent, because it requires analysis *at the margin,* is this: As taxes are raised, individuals in the system may indeed work harder, but their productivity declines. Hume himself had some trouble with this point:

> There is a prevailing maxim, among some reasoners, that every new tax creates a new ability in the subject to bear it, and that each increase of public burdens increases proportionably the industry of the people. This maxim is of such a nature as is most likely to be abused; and is so much the more dangerous as its truth cannot be altogether denied: But it must be owned, when kept within certain bounds, to have some foundation in reason and experience.

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Twenty years later, in *The Wealth of Nations,* Adam Smith had no such problem: In his hypothetical pin factory, what is important to a nation is not the effort of individuals but the productivity of *individuals working together.* When the tax rates are raised, the workers themselves may work harder in an effort to maintain their income level. But if the pin-making entrepreneur is a marginal manufacturer, the increased tax rate will cause him to shift into the leisure sphere or into a lower level of economic activity, and the *system* will lose *all* the production of the pin factory. The politician who stands in the midst of this situation may correctly conclude that the increase in tax rates causes people to work harder. But it is not so easy for him to realize that they are now less efficient in their work and are producing less.

To see this in another way, imagine that there are three men who are skilled at building houses. If they work together, one works on the foundation, one on the frame, and the third on the roof. Together they can build three houses in three months. If they work separately, each building his own home, they need six months to build the three houses. If the tax rate on homebuilding is 49 percent, they will work together, since the government leaves them a small gain from their division of labor. But if the tax rate goes to 51 percent, they suffer a net loss because of their teamwork, and so they will work separately. When they were pooling their efforts, since they could produce six houses in the same time it would take them to build three houses working alone, the government was collecting revenues almost equivalent to the value of three completed homes. At the 51-percent tax rate, however, the government loses all the revenue, and the economy loses the production of the three extra homes that could have been built by their joint effort.

The worst mistakes in history are made by political leaders who, instead of realizing that revenues could be gained by lowering tax rates, become alarmed at the fall in revenues that results when citizens seek to escape high tax rates through barter and do-it-yourself labor. Their impulse is to impose taxes that cannot be escaped, the most onerous of which is a poll tax or head tax, which must be paid annually for the mere privilege of living. Hume had no difficulty in pointing out the fallacy of that line of thinking:

> Historians inform us that one of the chief causes of the destruction of the Roman state was the alteration which Constantine introduced into the finances, by substituting a universal poll tax in lieu of almost all the tithes, customs, and excises which formerly composed the revenue of the empire. The people, in all the provinces, were so grinded and op-

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> pressed by the publicans [tax collectors] that they were glad to take refuge under the conquering arms of the barbarians, whose dominion, as they had fewer necessities and less art, was found preferable to the refined tyranny of the Romans.

The trouble with a poll tax, as Hume noted, is that it *can* be escaped—one method being not to defend your country against an aggressor who promises to remove the tax as soon as he has gained power. Montesquieu made a similar observation in Book XIII of *The Spirit of the Laws:*

> Because a moderate government has been productive of admirable effects, this moderation has been laid aside; because great taxes have been raised, they wanted to carry them to excess; and ungrateful to the hand of liberty, of whom they received this present, they addressed themselves to slavery, who never grants the least favor.
>
> Liberty produces excessive taxes; the effect of excessive taxes is slavery; and slavery produces diminution of tribute. . . .
>
> It was this excess of taxes that occasioned the prodigious facility with which the Mahommedans carried on their conquests. Instead of a continual series of extortions devised by the subtle avarices of the Greek emperors, the people were subjected to a simple tribute which was paid and collected with ease. Thus they were far happier in obeying a barbarous nation than a corrupt government, in which they suffered every inconvenience of lost liberty, with all the horror of present slavery.

Modern governments have at least abandoned the notion of using a poll tax to generate revenues. Instead, they often go directly to the barter economy in search of revenues. Activities previously not admitted to the money economy and public marketplace because of public disapproval—e.g., gambling and pornography—are welcomed because of the promise of revenues. But this process tends to lower the quality of the marketplace itself, hastening the exodus or discouraging the entry of enterprises that have earned public approbation.

"Cracking down"

Another timeless remedy of governments that find revenues falling in the face of rising tax rates is to increase the numbers and powers of the tax collectors. Invariably, this method further reduces the flow of revenues to the treasury. Yet even with a thousand-year history of failure, the policy of "cracking down" on tax evasion remains a favorite of modern governments. Here is Adam Smith, in *The Wealth of Nations,* on why such policies are doomed from the start:

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> Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state. A tax may either take out or keep out of the pockets of the people a great deal more than it brings into the public treasury in the four following ways.
>
> First, the levying of it may require a great number of officers, whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people.
>
> Secondly, it may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes. While it obliges the people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them to do so.
>
> Thirdly, by the forfeitures and other penalties which these unfortunate individuals incur who attempt unsuccessfully to evade the tax, it may frequently ruin them, and thereby put an end to the benefit which the community might have received from the employment of their capitals. An injudicious tax offers a great temptation to smuggling. But the penalties of smuggling must rise in proportion to the temptation. The law, contrary to all the ordinary principles of justice, first creates the temptation, and then punishes those who yield to it; and it commonly enhances the punishment too in proportion to the very circumstances which ought certainly to alleviate it, the temptation to commit the crime.
>
> Fourthly, by subjecting the people to the frequent visits and odious examination of the tax-gatherers, it may expose them to much unnecessary trouble, vexation, and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it.

Adam Smith's point about smuggling may now seem obscure. After all, smuggling was something that went on in the 18th century, wasn't it? Consider the following excerpts from a recent editorial in *The Wall Street Journal,* which urged New York State and New York City to reduce their combined cigarette tax from 26¢ to 10¢ a pack:

> Through our browsings in the *United States Tobacco Journal* we have learned of estimates that half the cigarettes smoked in New York City are smuggled in from North Carolina, where the tax is 2¢ a pack. State Senator Roy M. Goodman, a Manhattan Republican, says the state and city are losing $93 million a year in this fashion. The smugglers load 40-foot trailers with 60,000 cartons purchased legally at $2.40 each and peddle them in the city via the organized crime network for $3.75, which is $1.25 or more below legitimate retail.
>
> Mr. Goodman recommends a one-year suspension of the city's 8¢-a-pack tax in order to break up the smuggling, plus an increase in the state enforcement field staff to 250 from the current 50, plus five years in jail for anyone caught smuggling 20,000 cartons or more. Last year

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only nine smugglers were jailed, each for a few months, with the common penalty $10 or $15.

If Mr. Goodman's solution were adopted, at the end of the year the smugglers would be back, and the state would have a bigger bureaucracy. More smugglers would be caught, more judges and bailiffs and clerks would have to be hired, more jails would have to be built and more jailers hired. The wives and children of the jailed smugglers would go on welfare.

Cutting the tax to 10¢ avoids all that. It immediately becomes uneconomic to smuggle. The enforcement staff of 50 can be assigned to more useful work, the state saving $1 million on that count alone. The courts would be less clogged with agents and smugglers, and the taxpayers would save court costs, as well as the costs of confining convicted smugglers and caring for their families.

The state and city would *appear* to face a loss of $50 million or $60 million in revenues, but of course smokers would now buy their cigarettes through legitimate channels and the 10¢ a pack would yield about as much in revenues as 26¢ a pack yields now. But that's not all. Legitimate dealers would double their cigarette sales, earning higher business profits and personal income that the city and state then taxes.

And don't forget the impact on the millions of cigarette smokers who would save 16¢ a pack. At a pack a day, that's $58.40 per year. At average marginal tax rates, a smoker has to earn more than $80 before Federal, state, and city taxes are deducted to get that amount. He can thus maintain his or her standard of living on $80 less in gross wage demands per year, which means it becomes economic for the marginal employer to do business in New York, increasing the number of jobs of all varieties and reducing cost and tax pressure on social services.

Among other benefits, the industrious smugglers would have to find legitimate employment. It might be argued that they would be thrown on the welfare rolls. But if we know New York City, they are already on the welfare rolls, and would be forced to get off once they have visible jobs.

The Finance Office of New York City, unwilling to take the advice of either Adam Smith or *The Wall Street Journal*, simply rejected the idea that lowering rates would produce expanded revenues. But Adam Smith's advice was not even taken in England at the time he tendered it. The theory was not tested until 1827, and then only by accident, by an Act of Parliament. Oddly enough, the incident in question involved tobacco smuggling. Stephen Dowell gives the following account in *A History of Taxation and Taxes in England:*

> The consumption of tobacco had failed to increase in proportion to the increase in the population. A curious circumstance had happened as regards the duty on tobacco. In effecting the statutory rearrangement of the duties in the previous year, the draughtsman of the Bill,

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> in error, allowed one fourth of the duty to lapse in July. Unconsciously he had accomplished a master stroke, for his reduction in the duty was followed by a decrease in smuggling so considerable as to induce [Chancellor of the Exchequer] Robinson to allow his [budget] surplus, estimated at about £700,000, to go to continue the reduction thus unconsciously effected.

The Politburo of the Soviet Union has the same problem as the Finance Office of New York City: It also rejects the idea behind the "Laffer curve." The greatest burden to Soviet economic development is Soviet agriculture. Roughly 34.3 million Soviet citizens, out of a total population of 250 million, are engaged in producing food for the nation—and there is never enough. The United States, by contrast, employs only 4.3 million workers in food production, out of a total population of 200 million, generating an annual surplus for export equivalent to one-fourth the entire Soviet output. The drain on the Soviet economy is not only the low productivity of the farm sector. Because there are always shortages, and the state puts farm goods on the market at regulated prices rather than using the market system to allocate what is available, Soviet citizens spend billions of hours annually waiting on lines. If food were produced in plentiful quantities, it could still be allocated through regulated prices in conformance with Soviet ideology, but most of the lines would disappear, and the talents and energies of the urban work force would not be wasted in long lines.

The real source of this problem is the high marginal tax rates exacted on the state's collective farms. The state provides land, capital, housing, and other necessities on its collectives. It also permits the workers to keep 10 percent of the value of their production. The marginal tax rate is thus 90 percent. In agriculture, a small expenditure of effort might yield, say, 100 units of production; but twice the effort might be required for 150 units, and four times the effort for 200 units. The worker on the collective thus faces a progressive tax schedule so withering that any incentive to expend anything beyond a minimal effort is lost. With minimum work, he gets land, capital, housing, and other necessities, as well as 10 units of output. By quadrupling his effort (not necessarily physical effort, but perhaps increased attentiveness to details), he gets the same services and only 10 more units of output.

Meanwhile, however, the peasants on the collective farms are also permitted to tend private plots, the entire output of which is theirs to keep. The tax rate on these private plots is zero. Here is the result, as detailed by Hedrick Smith in *The Russians*:

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> Twenty-seven percent of the total value of Soviet farm output—about $32.5 billion worth a year—comes from private plots that occupy less than 1 percent of the nation's agricultural lands (about 26 million acres). At that rate, private plots are roughly 40 times as efficient as the land worked collectively. . . . Peasants farm their own plots much more intensively than they do collective land.
>
> Ultimately, the Communist ideal is to have this last embarrassing but necessary vestige of private enterprise wither away as industrialized state farming grows in scale and output. Nikita Khrushchev, in spite of rural roots, pursued that end vigorously and earned the enmity of the peasantry. He cut the size of private plots to a maximum of half an acre and made life difficult for the farm market trade. I was told by Russian friends that Ukrainian peasants became so irate that they stopped selling eggs as food and made paint out of them.
>
> Under Brezhnev things have improved. The maximum plot went back up to an acre and measures were taken to improve farm market operations. Soviet figures show the private farm output grew nearly 15 percent from 1966 to 1973.

In terms of the "Laffer curve," what Khrushchev did by reducing the size of the private plots from one acre to one-half acre was to increase the marginal tax rate of the *system* from point C to point A. This was undoubtedly a major cause of his political downfall. On the other hand, Brezhnev moved the marginal tax rate of the system back to point C, increasing output and revenues to the previous levels. This was an "economic miracle" of minor dimensions, but it has undoubtedly contributed heavily to Brezhnev's durability as a political leader.

The politics of the "Laffer curve"

The "Laffer curve" is a simple but exceedingly powerful analytical tool. In one way or another, all transactions, even the simplest, take place along it. The homely adage, "You can catch more flies with molasses than with vinegar," expresses the essence of the curve. But empires are built on the bottom of this simple curve and crushed against the top of it. The Caesars understood this, and so did Napoleon (up to a point) and the greatest of the Chinese emperors. The Founding Fathers of the United States knew it well; the arguments for union (in *The Federalist Papers*) made by Hamilton, Madison, and Jay reveal an understanding of the notion. Until World War I—when progressive taxation was sharply increased to help finance it—the United States successfully remained out of the "prohibitive range."

In the 20th century, especially since World War I, there has been

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a constant struggle by all the nations of the world to get down the curve. The United States managed to do so in the 1920's, because Andrew Mellon understood the lessons of the "Laffer curve" for the domestic economy. Mellon argued that there are always two prices in the private market that will produce the same revenues. Henry Ford, for example, could get the same revenue by selling a few cars for $100,000 each, or a great number for $1,000 each. (Of course, Ford was forced by the threat of competition to sell at the low price.) The tax rate, said Mellon, is the "price of government." But the nature of government is monopolistic; government itself must find the lowest rate that yields the desired revenue.

Because Mellon was successful in persuading Republican Presidents—first Warren G. Harding and then Calvin Coolidge—of the truth of his ideas the high wartime tax rates were steadily cut back. The excess-profits tax on industry was repealed, and the 77-percent rate on the highest bracket of personal income was rolled back in stages, so that by 1925 it stood at 25 percent. As a result, the period 1921-29 was one of phenomenal economic expansion: G.N.P. grew from $69.6 billion to $103.1 billion. And because prices fell during this period, G.N.P. grew even faster in real terms, by 54 percent. At the lower rates, revenues grew sufficiently to enable Mellon to reduce the national debt from $24.3 billion to $16.9 billion.

The stock market crash of 1929 and the subsequent global depression occurred because Herbert Hoover unwittingly contracted the world economy with his high-tariff policies, which pushed the West, as an economic unit, up the "Laffer curve." Hoover compounded the problem in 1932 by raising personal tax rates almost up to the levels of 1920.

The most important economic event following World War II was also the work of a finance minister who implicitly understood the importance of the "Laffer curve." Germany had been pinned to the uppermost ranges of the curve since World War I. It took a financial panic in the spring of 1948 to shake Germany loose. At that point, German citizens were still paying a 50-percent marginal tax rate on incomes of $600 and a 95-percent rate on incomes above $15,000. On June 22, 1948, Finance Minister Ludwig Erhard announced cuts that raised the 50-percent bracket to $2,200 and the 95-percent bracket to $63,000. The financial panic ended, and economic expansion began. It was Erhard, not the Marshall Plan, who saved Europe from Communist encroachment. In the decade that followed, Erhard again and again slashed the tax rates, bringing the German economy farther down the curve and into a higher level of

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prosperity. In 1951 the 50-percent bracket was pushed up to $5,000 and in 1953 to $9,000, while at the same time the rate for the top bracket was reduced to 82 percent. In 1954, the rate for the top bracket was reduced again, to 80 percent, and in 1955 it was pulled down sharply, to 63 percent on incomes above $250,000; the 50-percent bracket was pushed up to $42,000. Yet another tax reform took place in 1958: The government exempted the first $400 of income and brought the rate for the top bracket down to 53 percent. It was this systematic lowering of unnecessarily high tax rates that produced the German "economic miracle." As national income rose in Germany throughout the 1950's, so did revenues, enabling the government to construct its "welfare state" as well as its powerful national defense system.

The British empire was built on the lower end of the "Laffer curve" and dismantled on the upper end. The high wartime rates imposed to finance the Napoleonic wars were cut back sharply in 1816, despite warnings from "fiscal experts" that the high rates were needed to reduce the enormous public debt of £900 million. For the following 60 years, the British economy grew at an unprecedented pace, as a series of finance ministers used ever-expanding revenues to lower steadily the tax rates and tariffs.

In Britain, though, unlike the United States, there was no Mellon to risk lowering the extremely high tax rates imposed to finance World War I. As a result, the British economy struggled through the 1920's and 1930's. After World War II, the British government again made the mistake of not sufficiently lowering tax rates to spur individual initiative. Instead, the postwar Labour government concentrated on using tax policy for Keynesian objectives—i.e., increasing consumer demand to expand output. On October 23, 1945, tax rates were cut on lower-income brackets and surtaxes were added to the already high rates on the upper-income brackets. Taxes on higher incomes were increased, according to Chancellor of the Exchequer Hugh Dalton, in order to "continue that steady advance toward economic and social equality which we have made during the war and which the Government firmly intends to continue in peace."

From that day in 1945, there has been no concerted political voice in Britain arguing for a reduction of the high tax rates. Conservatives have supported and won tax reductions for business, especially investment-tax income credits. But while arguing for a reduction of the 83-percent rate on incomes above £20,000 (roughly $35,000 at current exchange rates) of earned income and the

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98-percent rate on "unearned income" from investments, they have insisted that government *first* lower its spending, in order to permit the rate reductions. Somehow, the spending levels never can be cut. Only in the last several months of 1977 has Margaret Thatcher, the leader of the opposition Conservative Party, spoken of reducing the high tax rates as a way of expanding revenues.

In the United States, in September 1977, the Republican National Committee unanimously endorsed the plan of Representative Jack Kemp of New York for cutting tax rates as a way of expanding revenues through increased business activity. This was the first time since 1953 that the GOP had embraced the concept of tax cuts! In contrast, the Democrats under President Kennedy sharply cut tax rates in 1962-64 (though making their case in Keynesian terms). The reductions successfully moved the United States economy down the "Laffer curve," expanding the economy and revenues.

It is crucial to Western economic expansion, peace, and prosperity that "conservative" parties move in this direction. They are, after all, traditionally in favor of income growth, with "liberals" providing the necessary political push for income redistribution. A welfare state is perfectly consistent with the "Laffer curve," and can function successfully along its lower range. But there must be income before there can be income redistribution. Most of the economic failures of this century can rightly be charged to the failure of conservatives to press for tax rates along the lower range of the "Laffer curve." Presidents Eisenhower, Nixon and Ford were timid in this crucial area of public policy. The Goldwater Republicans of 1963-64, in fact, emphatically opposed the Kennedy tax-rate cuts!

If, during the remainder of this decade, the United States and Great Britain demonstrate the power of the "Laffer curve" as an analytical tool, its use will spread, in the developing countries as well as the developed world. Politicians who understand the curve will find that they can defeat politicians who do not, other things being equal. Electorates all over the world always know when they are unnecessarily perched along the upper edge of the "Laffer curve," and will support political leaders who can bring them back down.

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The roller-coaster income tax

MARTIN ANDERSON

If Niccolò Machiavelli himself had designed a tax system, it is doubtful that he could have improved on ours. For any wise prince would want a tax system—like ours—that extracted the most tax revenues with the least awareness on the part of the citizens as to how much they were actually paying.

For the individual, the most important part of our tax system consists of taxes on income. These taxes are particularly important because, in the course of raising revenue for government, they also directly affect the incentive of the individual to work. The higher the tax rates, the less a worker keeps of what he earns. And the less he keeps, the smaller his incentive to create and produce goods and services.

Largely because of the different kinds of taxes on income, and the use of the withholding system, few people—even experts—are aware of how much tax is paid on income and, in particular, how the rate of tax varies with the level of income. Most of us seem to know, with a fair degree of accuracy, what our net pay is after deductions. But few could immediately recall how much tax they

This article is based on the author's forthcoming book, Welfare: The Political Economy of Welfare Reform *(Hoover Institution Press).*

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paid for, say, last month. And fewer still know what tax rate they would pay on additional income if their earnings increased.

There are good reasons for this state of affairs. First, we tend to think of income taxes as just *Federal* income taxes. This is reasonable to an extent, since the Federal income tax is by far the largest. But 42 states and the District of Columbia, as well as many cities, also tax earned income. The social security tax is also a tax on income. For many people, the combination of all these taxes adds up to considerably more than just the Federal income tax alone. The real income tax we pay is the sum of all the income taxes we pay to government.

Second, we tend to think only of the published tax rates on "taxable income," which are progressive. We often neglect to calculate the effect of exemptions, deductions, and credits. It seems to be generally assumed that the Federal income-tax rate begins at 14 percent and rises smoothly to 50 percent on earned income—or to 70 percent for investment income. It doesn't: In recent years, income-tax exemptions, deductions, and credits have multiplied both in number and size. They now exert a powerful effect on actual tax rates paid, especially in the lower-income brackets. Actual tax rates on earned income are dramatically different from the impression given by the official tax tables.

Third, we tend to think in terms of the *average* tax rate—the total amount of taxes we pay divided by our total income. This is useful enough for some purposes. But in gauging the effect of income taxes on the incentive to work, the *marginal* tax rate is what matters: the varying tax rate that applies to each additional increment of earned income.

The Federal income tax and most state income taxes are supposed to be "progressive" over most of the income range. Generally speaking, if earnings increase, a higher rate of tax must be paid on the added amount of earnings. In the move to a higher income tax bracket, the tax rate changes *only* for the *additional* income earned in the higher bracket.

Fourth, many of us tend to focus our thoughts on income taxes only during March and early April. Automatic payroll deductions make paying taxes relatively painless over the course of the year. When it comes time to balance accounts in the spring, we are usually concerned only with how much more we will have to pay or how much we will "get back." We have been conditioned to think of taxes in terms of small incremental payments or returns, rather than total amounts.

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The overall effect is a significant lack of knowledge about how high income taxes really are and how much they vary for different income groups. Of course, there are other taxes besides income taxes. But the taxes on earned income have the most powerful, direct effect on the incentive to produce. The higher they are, the greater the deadening effect on the productivity of workers.

The overall level of all taxes—income taxes, sales taxes, property taxes, and others—is also critically important. To a large extent the amount of taxes we pay determines the role government plays in our lives. The amount of all taxes in the United States has grown dramatically during the last 30 years. In 1950, taxes of all kinds were 25 percent of our net national product. By 1960, they were over 30 percent. By 1970, they were over 35 percent. It will not be a great surprise if we find that they are over 40 percent in 1980.

The family's tax burden

How high are the income tax rates paid by workers in the United States? How do they change as income changes? There is no way to answer these questions both completely and simply. Income taxes vary from individual to individual and from family to family, depending on the size of the family, on the amount and kind of deductions taken, on the size of the earnings, and on the city and state of residence. However, we can get a reasonably clear idea of the magnitude of the income taxes by calculating what a typical family pays.

As an example, let us consider a family of four—a husband, a wife, and two children. Let us assume that the entire income of this family comes solely from wages and salaries and that the family files a joint return, takes the standard deduction, and lives in California. Let us further assume that the family pays only three major taxes on earned income: social security tax, Federal income tax, and state income tax.

In 1976, the social security tax rate was 5.85 percent, paid on all wage and salary income up to $16,500 a year. The marginal tax rate of 5.85 percent is constant over the entire range of income from $0 to $16,500. (See the second column of the table on the next page.)

The Federal income tax is a little more complicated. In 1976, *exemptions* from taxable income were $750 per person, regardless of the amount of earned income. The standard *deduction* on a joint return was $2,100 for all levels of income between $0 and $13,125. The deduction then rises gradually, reaching a maximum of $2,800

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Marginal Income Tax Rates for a Typical Family of Four in California (1976)

Annual Earned Income	Social Security Tax Rate	Federal Income Tax Rate	State Income Tax Rate	Overall Income Tax Rate
$1,000	6%[1]	–10%	–	–4%
2,000	6	–10	–	–4
3,000	6	–10	–	–4
4,000	6	–10	–	–4
5,000	6	10	–	16
6,000	6	10	–	16
7,000	6	23	–	29
8,000	6	26	–	32
9,000	6	17	–	23
10,000	6	19	–	25
11,000	6	19	9%	34
12,000	6	19	3	28
13,000	6	17	4	27
14,000	6	18	4	28
15,000	6	17	4	27
16,000	6	19	5	30
17,000	3	19	5	27
18,000	–	20	5	25
19,000	–	25	6	31
20,000	–	25	6	31
21,000	–	25	6	31
22,000	–	26	7	33
23,000	–	28	7	35
24,000	–	28	7	35
25,000	–	28	8	36
26,000	–	30	8	38
27,000	–	32	8	40
28,000	–	32	9	41
29,000	–	32	9	41
30,000	–	33	9	42
31,000	–	36	10	46
32,000	–	36	10	46
33,000	–	36	10	46
34,000	–	37	11	48
35,000	–	39	11	50
36,000	–	39	11	50
37,000	–	39	11	50
38,000	–	40	11	51
39,000	–	42	11	53
40,000	–	42	11	53
41,000	–	42	11	53
42,000	–	43	11	54
43,000	–	45	11	56
44,000	–	45	11	56
45,000	–	45	11	56
46,000	–	46	11	57
47,000	–	48	11	59
48,000	–	48	11	59
49,000	–	48	11	59
50,000	–	48	11	59
51,000	–	50	11	61

[1] All tax rates rounded to nearest full percent.

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for earnings of $17,500 and above. For a family of four, the amount of income untaxed because of exemptions and deductions varies from $5,100 to $5,800, depending on the level of income.

The Federal income-tax rate on taxable earned income starts at 14 percent and gradually increases to 50 percent. After the amount of Federal tax *owed* is calculated there are tax credits that reduce the amount of tax that must be *paid*. In 1976, the *general tax credit* on Federal income taxes was $35 per person *or* 2 percent of taxable income, whichever was larger. For a four-person family taking the standard deduction, this meant a credit of $140 for incomes between $0 and $12,100. The general tax credit increased slowly after that, reaching its maximum value of $180 at $14,286 of earned income, and remaining constant at $180 for all higher incomes.

To complicate matters further, an *earned-income credit* was added to the Federal tax code in 1975 (though it was generally considered to be only a temporary addition). Though called a tax credit, it actually constitutes a welfare program using the tax system to give money to low-income families. This is how it works: The earned-income "credit" is 10 percent of earnings up to $4,000 a year. A family with no earnings receives no "credit." If its earnings are $1,000, it gets a "credit" of $100. But at that low level of earnings, there are no taxes owed to the Federal government to which such a "credit" can be applied. So the Federal government reasons that it owes the family the amount of the "credit" and sends it a check for $100.

The earned-income "credit" increases to a maximum of $400 for earnings of $4,000, and then begins to decline. If the family has earnings of $5,000, the Federal government reduces the amount of the check to $300. If it makes $6,000, the check is $200; at $7,000, it is only $100. When earnings reach $8,000, the earned-income "credit" is phased out completely. The combined effect of exemptions, deductions, and credits of one sort or another is to eliminate any Federal income tax on earned incomes below $6,900 a year. The earned-income "credit" is thus nothing but a negative income tax. But since truth-in-labeling laws do not apply to the government's own legislation, the earned-income "credit" was mislabeled when it was originally enacted.

There are some curious features of the earned-income tax credit. Perhaps the original idea was to redistribute more income from upper- and middle-income taxpayers to low-income workers, by more than offsetting the effect of the social security tax. The "credit" does accomplish this, but in doing so it violates a basic

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principle of welfare. For earnings up to $4,000, the amount of the check from the government is *inversely* proportional to need: The more a family earns, the more welfare it gets.

Perhaps the intent of the "credit" was to encourage the low-income population to work. It does provide some incentive, at least for those contemplating working for $4,000 a year or less. But in order to phase out the $400 "bonus" for incomes between $4,000 and $8,000 a year, it is necessary to impose, in effect, an additional marginal tax of 10 percent on all earnings above $4,000. And this has a very critical effect on work incentives.

Perhaps the original intent was to pave the way for a full-fledged negative income tax by smuggling the principle quietly into the tax code. This attempt has been successful, to some extent, but the "credit"—with its rising and falling subsidy—is such a strange and twisted version of the negative income tax that it really adds nothing to our understanding of the possible consequences of a genuine negative income tax.

One thing the earned-income "credit" does do, which clearly was not intended, is to provide a tidy government subsidy to employers who pay low wages. Employers in low-wage industries will not take long to realize that any employee earning $4,000 annually will also receive a government check for an additional $400. Maybe employers will ignore this government "bonus" when they set pay scales. But maybe they won't.

The combined effect of all these exemptions, deductions, and credits on the Federal income-tax rate can be seen in the third column of the table on page 20. We now have a *negative* income-tax rate of 10 percent on all earnings below $4,000. As the earned-income "credit" begins to decline when earnings exceed $4,000, the marginal tax rate jumps abruptly *by 20 percentage points*—from minus 10 percent to plus 10 percent. We don't really know much about the effects of imposing such a large, sudden tax-rate increase on the earnings of a low-income worker. But it probably does not do too much for his incentive to better himself.

As the family's annual earnings rise over $6,100, the regular Federal income tax rate takes effect, and the marginal tax rate jumps another 13 percentage points and then continues to rise. The Federal income tax rate on the additional $1,000 earned between $6,000 and $7,000 is 23 percent. For the $1,000 earned between $7,000 and $8,000, it is 26 percent. After the earned-income "credit" is phased out at $8,000, the Federal rate drops sharply back to 17 percent for the next $1,000 increment of earned income. It then reverses and

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rises smoothly until it flattens out at 50 percent for all earned income over $49,800 a year.

California's income tax was chosen to represent a typical state system. (Although California is the largest state, 11 other states have marginal income tax rates that equal or exceed California's.) In 1976, the standard *deduction* for a joint return in California was $2,000. An *exemption credit* of $25 for each parent and $8 for each child was allowed, making a total exemption credit of $66 for a family of four.

California also has a special *low-income credit* of $80 for families with incomes up to $10,000 a year. The effect of this low-income credit is similar to that of the Federal earned-income "credit." A typical family of four does not pay any income tax in California until its earnings exceed $10,000. Because of the manner in which the low-income credit is phased out, California's marginal income-tax rate on earnings between $10,000 and $11,000 a year is surprisingly high, 9 percent (see the fourth column of the table). The tax rate then drops sharply to 3 percent for the next $1,000 increment of earnings, rises gradually, and finally peaks at 11 percent for earnings over $33,000.[1]

The three major taxes on income—the social security tax, the Federal income tax and the state income tax—all combine to determine the overall marginal tax rate on earned income. The results are summarized in the fifth column of the table on page 20.

The roller-coaster ride

Using the table, we can follow our typical family through a series of pay raises. Assume first that the husband works about half time and makes $4,000. Social security taxes are $234, and the Federal government sends the family a check for $400. On balance, the government pays the family $166, making its total income $4,166. The "tax rate" is a *negative* 4 percent.

Next year, the husband accepts the opportunity to increase his working hours by 50 percent. His income before taxes and subsidies jumps to $6,000, and he feels pretty good: After all, he has increased his income by half. But has he really? He now earns $6,000. Social security taxes have increased to $351. But his Federal "credit" has been reduced to only $200. By working more, he receives less from the Federal government, and this decreases his income, just

[1] California has one other small tax on earned income, the Disability Insurance Tax, which is 1 percent of all earnings up to $11,400.

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as an increase in taxes would. The family must now *pay* the government $151 in net taxes. Thus its net income is now $5,849—$1,683 more than it was when their earned income was $4,000. Earnings have increased by $2,000, but spendable income has increased by only $1,683. The effective tax rate on the additional $2,000 of earnings is 16 percent.

Then suppose the husband is offered a better job, with longer hours, that pays $8,000 a year. Undaunted, he accepts. Social security taxes increase to $468. No more checks are mailed to the family from Washington. Instead, the Internal Revenue Service requires him to *pay* $292 in Federal income taxes. The total tax bill has increased to $760. The family's net income rises to $7,240. If the family begins to get an uneasy feeling that the additional $2,000 of income does not seem to go quite as far as expected, the feeling would be justified. When the father's earnings were $6,000, the family's net income was $5,849. Now the net income is $7,240—an increase of only $1,391. The effective marginal tax rate on the added income from the new job is *over 30 percent.* (There once was a time not very long ago when income tax rates like these applied only to people in *high*-income brackets).

The husband's job prospects continue to improve. He learns his job well, works hard, and is soon earning an additional $2,000 a year. The family's financial situation is a little brighter now, because the mysterious workings of our income-tax system *lower* the tax rate. On the family's earnings of $10,000, the social security tax is now $585, and the Federal income tax has increased to $646. There is still no state income tax to pay. The family's net income is $8,769 —an increase of $1,529. For this $2,000 of additional earnings the income-tax rate is slightly over *23 percent.* The husband may feel, if he did the calculations, that it is somewhat odd that he should be paying a lower rate of tax on higher levels of income. The taxpayer's lot, however, is not to reason why, but to pay.

The husband is then offered overtime work and accepts. Income before taxes increases by $1,000. The social security tax becomes $644; the Federal income tax is $836. And now the state of California wants a contribution—$94, to be exact. The family's net spendable income is $9,426, only $657 more than it was before the husband started working overtime. Perhaps he would have reconsidered if he had realized that the tax rate on that $1,000 of overtime pay would be over *34 percent.*

Let us briefly review the experience of our typical family. When its earned income was less than $4,000, the marginal tax rate was

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a *negative* 4 percent. For the next $2,000 of income, it jumped to a *positive* 16 percent. For the next $2,000 it was over 30 percent. On the next $2,000 the marginal tax rate *dropped* to 23 percent. And then it bounced back up to over 34 percent for the next $1,000 of earnings.

Moving on to higher levels of earned income, the family probably becomes increasingly mystified. Between $11,000 and $13,000 the marginal tax rate is 27 percent, a *fall* of 7 percentage points (see the fifth column of the table). Between $13,000 and $14,000, the tax rate then *rises* slightly to 28 percent. Between $14,000 and $15,000, it *falls* slightly to 27 percent. Between $15,000 and $16,000, it again *rises* to 30 percent. After the family's income passes the $16,500 mark, it stops paying social security taxes.[2] Although both Federal and state tax rates continue to rise, the net effect is that the overall tax rate on income between $16,000 and $18,000 *falls* by four percentage points to 26 percent.

After the $18,000 income level has been passed, the roller coaster course of the marginal income-tax rate ends. On the next $3,000 of income, the marginal tax rate *rises* to 31 percent—and continues to rise smoothly until it reaches its maximum rate of 61 percent for all earned income in excess of $49,800 (see the fifth column of the table on page 20).

An unconscionable system

The income tax in the United States is widely believed to be a tax whose marginal rate starts low and rises evenly with increasing income. But tinkering with the income tax system to achieve social welfare objectives rather than to raise revenues has essentially destroyed this feature over a wide and critical range of income. To make the marginal income tax rate *negative* for the first $4,000 of income, and to hold it at 16 percent for the next $2,000, it was necessary to increase sharply the tax rate on income between $6,000 and $8,000.

The combined effect of Federal and state income taxes—with

[2] It should be noted that the social security tax is significantly higher for two-worker families, an increasingly large segment of the working population. If both husband and wife work, each pays social security taxes on *all* personal income up to $16,500. If their earnings are approximately equal, the family would pay social security taxes on all earned income up to $33,000 a year. The result for that two-worker family is an increase of six percentage points in the marginal income-tax rate on all income between $16,500 and $33,000 a year (see the dotted line in the chart on the next page). In order to keep our example as simple as possible, it has been assumed that only one member of the family works.

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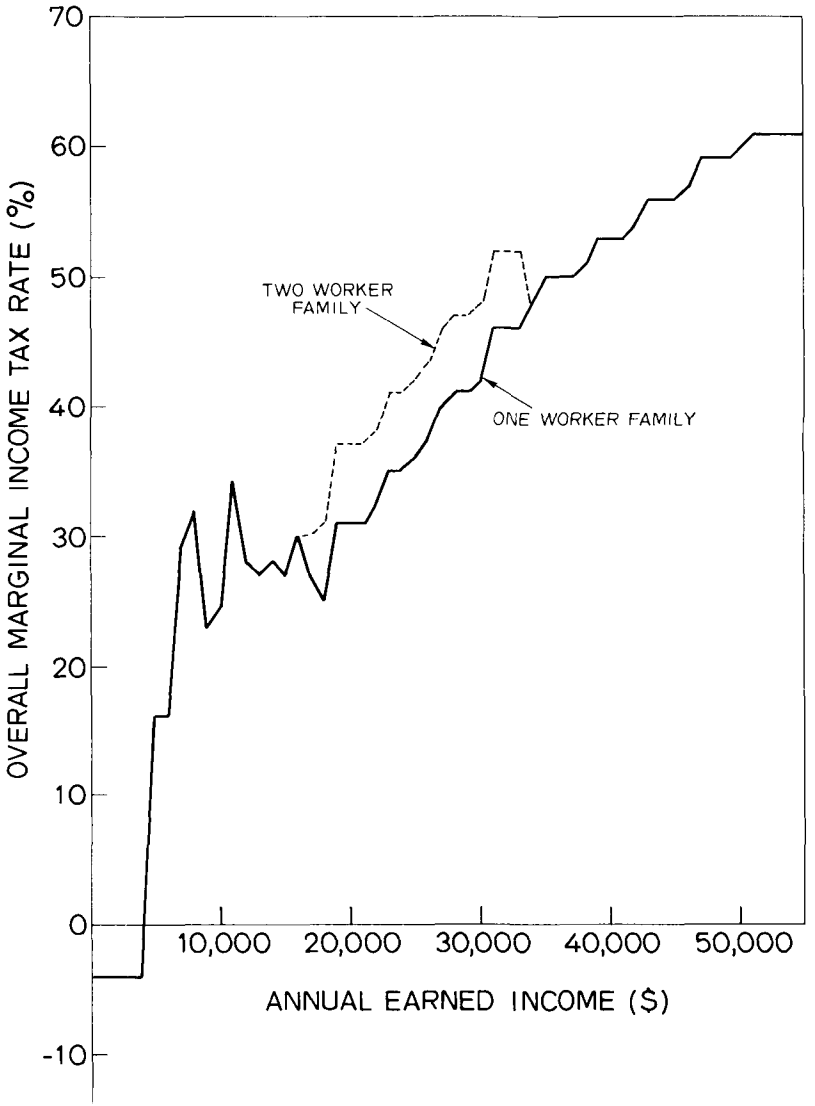
Marginal Income-Tax Rates for a Typical Family of Four in the United States (1976)



all their exemptions, deductions, and credits—and the social security tax *is a marginal income tax rate that averages 28 percent for the entire range of income between $6,000 and $18,000 a year.* While there are sharp fluctuations within this range, a trend line statistically fitted to the data points is essentially flat. Only when income exceeds $18,000 a year does the marginal tax rate begin its expected steady, upward climb.

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In the chart on page 26, the marginal income-tax rates are plotted for the family of four in our example. What is especially interesting, and dismaying, is the shape of the plotted tax rate schedule for earned incomes below $18,000. The most steeply increasing part of the marginal tax rate curve lies between $4,000 and $8,000 of income. Flat and negative for the first $4,000 of income, it suddenly thrusts upward—rising 36 percentage points over only $4,000 of additional income.

It is hard to believe we did this on purpose—that we intentionally saddled with the highest rate of increase in the marginal tax rate that part of our labor force perhaps most sensitive to disincentives. We should not be surprised if some of these workers become reluctant to increase, or even maintain, their work effort.

The nonsensical nature of our income tax rates becomes even clearer between $8,000 and $10,000. Within this short range it suddenly reverses—the more you earn, the lower your marginal tax rate. When the California state income tax takes effect between $10,000 and $11,000, the marginal income-tax rate again reverses itself and jumps sharply to 34 percent. This pattern, of course, is peculiar to families living in California. But the odds are good that other state income taxes (and city income taxes) would produce similar results in many cases.

Over the next $7,000 of earned income—between $11,000 and $18,000—the marginal tax rate reverses once more and moves jaggedly downward. Within this income range lie many middle-income families. Their overall marginal income-tax rate, at least for those who take the standard deduction, is high and *declines* with increasing income. And this would be true even in a state with no income tax.

After earnings exceed $18,000, the marginal income-tax schedule assumes the more familiar pattern of a consistent, rising rate, assuming that the standard deduction is taken. But as incomes move into these ranges, the likelihood that a family will itemize deductions increases with increasing income.

The typical family of four in our example is, of course, not representative of *all* American families. For families that itemize deductions, the marginal tax rates can be lower, but the tax situation is much more complicated. The marginal income-tax rate for the family that itemizes deductions depends on the number and size of their deductions—for such items as state and local income taxes, mortgage interest, sales taxes, medical expenses, and charitable contributions. There can thus be even more bizarre variations in the

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size of the marginal tax rate on income. Some people live in states where the state income-tax rate is lower than in California. In some states it is higher; and in others there is no income tax. There are also those unlucky souls who live in places like New York City and pay a fourth major tax on income.

The income-tax situation is undeniably complex. It is reasonably clear what happens to a family making less than $18,000 a year and lacking the inclination or sophistication to puzzle out and itemize deductions—or lacking enough deductions to make it worthwhile to itemize them. For most of these families, marginal income-tax rates are high and inconsistent—and confusing.

The effect of our efforts to use the tax system to accomplish social goals, such as giving money to those with low incomes and trying to increase their incentive to work, has had serious and apparently unforeseen side effects.

Income tax rates in the United States have now risen so high for so many people that we should be seriously concerned with the effect of these high tax rates on national productivity. The combined tax on income is now far too high. It should be lowered across the board.

The shape of the marginal tax-rate schedule has been so distorted that a graph of the rates looks like the course followed by a roller coaster. The up-and-down nature of the income-tax rates raises unanswerable questions about the equity of our tax system. Why should someone whose income increases from $7,000 to $8,000 pay a tax of 32 percent on an increase of $1,000 in his income, while someone making $17,000 pays only 25 percent on a $1,000 increase in his income?

If the marginal tax-rate structure that results from the interaction of all the deductions, exemptions, and credits had been spelled out in one comprehensive reform plan, it would have been dismissed as self-evident nonsense. But the nonsense is not self-evident: It is masked today by the variety and complexity of our income-tax system. We have an embarrassing system that should be corrected as soon as possible before its distorting effects become permanently established in our society. As it now works, the income-tax system is unconscionable.

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A new interpretation of the I.Q. controversy

BRIGITTE BERGER

ANYONE who wishes to understand the controversy over the differences in I.Q. scores among different racial, ethnic, and social groups is faced with three formidable obstacles: the veritable mountains of seemingly contradictory empirical data; the growing body of vitriolic polemical writings, which scarcely facilitate the dispassionate examination of the data; and what might be described as the paradigmatic rut—the fixation on the old intellectual models of the Nature/Nurture debate. Given these obstacles, it may be useful to try out a new model that will offer a fresh perspective on the data and, at the same time, shift the political ground of the controversy.

The contention of this article is that, contrary to some critics, I.Q. tests do indeed measure something. But what they measure is neither "intelligence," as orthodox proponents of the tests continue to claim, nor some putative racist or cultural bias in the tests themselves, as critics of the orthodox view claim. Rather, *I.Q. tests measure certain specific structures of "modern consciousness"*—a cast of mind not equally shared by all who live in our modern world.

* * *

I.Q. testing has become a political issue. Tests have been banned in the schools of New York, Philadelphia, and Washington, D.C.;

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in California, tests were discontinued in 1974, and will be banned entirely if a court case, brought by the N.A.A.C.P. and other groups, is decided in favor of the plaintiffs' contention that such tests are intrinsically biased against minorities. Moreover, the general achievement levels and scholastic test scores of the nation's schoolchildren have dropped alarmingly in the past 13 years; this fact will inevitably be related to some data concerning the declining levels of I.Q. scores nationwide. The political issue of racism is thereby connected to the much broader public alarm over the performance of the educational system.

The politicization of the I.Q. controversy has brought about, in the minds of many, a facile distinction between "good guys" and "bad guys." The "bad guys" supposedly include Arthur Jensen, William Shockley, and R. J. Herrnstein, who (in varying ways) have argued that intelligence is predominantly genetically based, and who have thus been attacked as racists. The "good guys" are those who argue that intelligence is primarily learned and is therefore a function of the sociocultural environment. In certain circles, anyone daring to advocate any kind of genetic approach to the question has been labeled an enemy of the people. Needless to say, name-calling has failed to evaporate the data on which the "bad guys" base their arguments—data that continue to call for interpretation.

The most important data indicate that black Americans, as a group, score significantly lower on I.Q. tests than non-black Americans. The data in the California court case show this dramatically: In 1974, 9.1 percent of the state's total school population were black, but 27.5 percent of those classified as "educable mentally retarded" were black. But there are some equally significant data, which also merit public attention, indicating a *statewide decline* in I.Q. scores in California during the years leading up to 1974, when court actions stopped I.Q. testing in the state schools. (Similar findings have also been reported in two other states.) The data cover a very large sample of schoolchildren—about a quarter of a million 12th-graders and about a third of a million 6th-graders were tested annually between 1969 and 1973. Even more startling, the decline in I.Q. scores among the supposedly more intelligent students (those in the 75th percentile and above), 3.1 percentage points, was greater than the decline among those deemed to be less intelligent on the basis of their performance (those in the lower percentiles), 2.2 percentage points. Yet the home environment of the students in the higher percentiles, who show the largest drop in

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scores, is precisely what has been regarded as ideal by educators! The parents of these children typically have high I.Q.'s themselves, hold college degrees, and have traditionally been most concerned with their children's education. Moreover, these children are most likely to attend schools in affluent suburbs, small towns, and the "better areas" of the cities. It can hardly be claimed they are the victims of racist prejudice.

What is one to make of two such conflicting sets of data? The two camps in the current controversy are apt to fasten on one or the other; neither is comfortable with both. Yet both, together, must be interpreted. The courts, in this as in so many other issues, are probably the least suitable places for the purpose of interpretation. If it is to be resolved in an intellectually adequate way, the issue must be settled in the arena of scientific discourse.

Now it is interesting that both camps have an essentially similar conception of intelligence as a given quality of individuals. What they differ about is the causal explanation of this quality and its measurement. At this point, I should like to propose a basic revision in the conception of intelligence. Intelligence, I suggest, is not, or at least not primarily, a given quality of individuals, but a manifestation of a collective configuration of consciousness; what appears to be intelligence in one such configuration may not in another, and vice versa. At first glance, this suggestion might seem to be only another version of the sociocultural position. What I am arguing, however, is far more radical: *Not only the particular measuring devices (that is, the I.Q. tests themselves) but also what they measure (the mysterious quality called "intelligence") are sociocultural constructions.* This does not imply that what I.Q. tests measure has nothing to do with an innate quality or set of qualities understood as "natural" human potentialities. An argument can be made that everything human involves such innate qualities, probably even a sense of humor or musical ability. Yet no one would suggest that someone who fails a test measuring musical ability is therefore lacking in intelligence. One may be grateful that there are as yet no tests to measure a sense of humor; if there were, the same logic would apply.

What we call "modern consciousness" is a historically specific sociocultural construction. As such, it is accessible empirically; at least in principle, some of its components—notably those captured by I.Q. tests—may well be measurable. Indeed, it can be argued that contemporary psychology itself is a historically specific phenomenon—i.e., it is not only an intellectual tool for the perception of

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"modern consciousness" but also the direct product of that consciousness. By the same token, it is not applicable to other forms of consciousness: The often grotesque attempts of "psychohistorians" to apply contemporary psychological techniques to earlier periods of history or to primitive peoples exemplify the distortions that ensue when the historical specificity of "modern consciousness" is overlooked.

History and "modern consciousness"

To speak of "*modern* consciousness" is ipso facto to repudiate the notion that such consciousness is an immutable expression of human nature. "Modern consciousness" is the outcome of specific social forces, especially of the science and technology of the last few centuries, but also of complex social organizations, urbanism, widespread literacy, and the mass media. "Modern consciousness" and the social institutions of modernity are closely interrelated and interdependent: In his everyday life, the individual continually produces and reproduces the institutions of modernity; at the same time, his consciousness is the product of these institutions.*

Intelligence is not a quality that can be detached from the overall consciousness of an individual—no more and no less than can any other aspect of consciousness. Whatever intelligence may be "in itself," its empirical manifestations always take place within the context of a specific structure of consciousness that is historically and sociologically "locatable." This context could be called the sociocultural environment of the individual, if that description is understood in a much more comprehensive way than it is by those who understand it in terms of class, race, or ethnicity. It is not just the milieu of a particular group within society; rather, it is the entire social world inhabited—more or less uneasily—by all such groups; it is something like a "cosmos," an integrated structure within which reality is defined and apprehended.

For example, let it be stipulated that both contemporary Americans and citizens of classical Athens differ among themselves in an individual quality called intelligence. Let it further be stipulated that this quality is the result of either heredity or environment. Yet even if it were technically possible, a comparison of I.Q. scores

* The theory of "modern consciousness" underlying the present argument derives from phenomenology and from the sociology of knowledge. It was formulated, with special reference to the process of modernization in the "third world," in *The Homeless Mind: Modernization and Consciousness*, by Peter Berger, Brigitte Berger, and Hansfried Kellner.

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between the two groups would be meaningless—not only because of the cultural bias built into the measuring devices, but—much more importantly—because "intelligence" today and "intelligence" in Socrates' Athens mean different things. A crucial test of the intelligence of an Athenian schoolboy would have been his performance in the discipline of poetics: Let a modern psychologist design a test to measure what Athenian educators would have called "the capacity to hear and to discern the voices of the gods"!

If contemporary psychology and all its works must be understood as a product of "modern consciousness," then so must the data amassed by the psychologists. It is a fact that "modern consciousness" is not unified or evenly distributed (this is perhaps most obvious in the "third world," where it is a very recent phenomenon). As a historical entity, "modern consciousness" can be disassembled, dissected. Thus, there are components of "modern consciousness"—e.g., the capacity for abstract, rationalistic analysis—that can be traced to the influence of science and technology; others can be traced to bureaucracy, others to the pluralism of urban life. Moreover, even in a highly modernized society, some people are "more modern" than others, a fact that can always be explained, in principle, by analyzing their particular social context. Finally, "modern consciousness" is not something established once and for all. It is constantly changing, and some of its features are reversible. In sum, modernization is always a matter of degree, and there are also various degrees of de-modernization. (Such de-modernization processes can be explained as responses to built-in tensions and discontents of modernity, but that is another and indeed a very large subject.)

Given the plausibility of this conception of "modern consciousness," it is possible to hypothesize further that different groups within American society—and certainly different racial groups—have different relationships to the process of modernization (for reasons that the historian would have little difficulty pinpointing) and ipso facto to "modern consciousness." This interpretation shows rather clearly why the attempts to devise "culture-free" I.Q. tests have consistently failed. The failure is not the fault of psychologists; it is endemic to the phenomenon psychologists want to measure. This interpretation also entails a shift of attention: *away from* the two individuals, the psychologist and his subject, trying to relate through an allegedly neutral, scientific procedure, and *toward* the social world that envelops both and that structures the consciousness of each.

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Reinterpreting the data

Needless to say, the plausibility of any theory lies not in its aesthetic appeal or even its logical consistency, but in its capacity to illuminate empirical data. How does this new paradigm throw light on the I.Q. data? It permits a reinterpretation of the relationship of I.Q. to various categories such as age, race, etc., and allows a fruitful reorganization of the data into new theoretical categories.

1. *I.Q. and age.* According to the orthodox conception, intelligence develops in the child, whether through the unfolding of a genetically given constant or as the result of the interaction of heredity with various environmental influences, and then remains a permanent trait of the adult. In the words of Philip Vernon, in the standard book on the subject, *Intelligence and Attainment,* "the growth of intelligence seems to slow down soon after 12 years and to cease somewhere around 14 to 16 years," and "average adult test scores are no higher than those of 13- to 16-year olds."

Is that really so? Not quite. Data now show how I.Q. can be raised, often significantly, at different points in the life cycle of an individual as his sociocultural environment is changed. Thus the "normal" development of intelligence in children may sometimes be drastically altered by a change in environment. Data on this are provided in the studies by Sandra Scarr-Salapatek and Richard Weinberg concerning the change in the I.Q. of black children adopted into white homes, or the study by Bernard Brown and Frances H. Palmer concerning the effect on I.Q. of Head Start programs in Nassau County, New York. At the other end of the life cycle, the data in a study by Richard Sprott indicate that I.Q. and learning ability do not automatically decline with age, but often remain steady or even increase, depending on an individual's professional and other social involvements.

All such data, of course, are grist for the socioculturalists' mill in the current controversy, and rightly so. What the new paradigm makes possible, however, is to ask how sociocultural interventions in the processes of biological maturation and decline relate to the structures of modernity. With regard to the data on adopted black children, it may be hypothesized that the decisive sociocultural variable is not the race or even class of the parents, but rather the fact that they were in a very direct relation (by virtue of their occupations, for instance) to the more modernized sectors of American society. What was important for these children was not the change from a black to a white milieu, or even from a lower to a higher class, but rather the shift to a new milieu involving specific

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structures of "modern consciousness" that are measured by I.Q. tests. It may be further hypothesized that the same change in I.Q. scores would take place if the modernized milieu were black—and there are even some data supporting this hypothesis. For example, children in an all-black high school in Washington, D.C., in 1939 had remarkably high I.Q.'s. Unfortunately, there is no information on the backgrounds of these children, but it seems reasonable to believe that their families were more directly tied into modernizing processes than is the case with most black families in inner-city Washington today.

Obviously such reinterpretation does not deny that there are processes of both maturation and decline in individuals or that these organic processes influence intelligence. But the new paradigm would suggest that these biological processes are affected by the individual's cognitive participation in the structures of "modern consciousness." Lucky children are born into a "good home," where adults push them into the cognitive structures of modernity. (Of late, as I shall argue below, such "good homes" have been harder to come by, as de-modernizing influences have begun to affect the upper-middle class.) What orthodox psychology calls "cognitive maturity" is thus affected by the sociocultural environment as a whole, but more specifically involves the internalization by the individual, as measured by I.Q. scores, of the cognitive requirements of the modern technological-rationalistic world. "Cognitive maturity" means, in effect, the ability of an individual to function effectively in that world.

Experiencing modernity

2. *I.Q. and social experience.* There is thus evidence that children born into less fortunate circumstances can acquire a modern cognitive apparatus at a later age. The decisive variable, it is hypothesized, is social experience as it either relates or fails to relate the individual to the structures of "modern consciousness." A dramatic illustration is the reported fluctuation in the I.Q. scores of Patty Hearst. Judged by her school records, she had a fairly high I.Q. Following her participation in the anti-modern cognitive jumble of the Symbionese Liberation Army, her I.Q. was measured after her capture; it had declined by around 20 points. Later, after "deprogramming" had taken place, her I.Q. began to rise again. This case suggests a much wider reinterpretation of I.Q. data.

Henry Goddard, one of the major innovators of I.Q. testing in

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this country, tested immigrants arriving at Ellis Island in 1912. He found that 83 percent of Jews, 90 percent of Hungarians, 79 percent of Italians, and 87 percent of Russians were "feeble minded." The average I.Q. of these groups underwent basic changes in subsequent years; eventually, no significant deviations from the national norm could be found. The socioculturalists argue, of course, that Goddard's measuring devices were biased to begin with. They probably were, but I suggest that something else was involved. The "feeble minded" Jews did not become "brighter" simply by being transported to the Lower East Side. But neither did they simply attain the linguistic and cultural ability to "perform" according to the criteria of WASP psychologists. What happened was more fundamental: In shifting from the social world of the *shtetl* to that of modernizing America, they began to internalize the structures of "modern consciousness" measured by I.Q. scores.

There are data showing considerable change in national I.Q. norms in the course of this century—notably from the Army Alpha tests administered to draftees in both World War I and World War II; the latter group had much higher I.Q. scores. But other data (very well summarized by Christopher Jencks and also by Thomas Sowell) show that similar gains in I.Q. were made by other populations tested some years apart—for instance, children from Tennessee mountain areas tested in 1930 and 1940, and black children tested in the rural South and then after migration to the urban North. At the same time, there are data showing a decline in I.Q. scores of upper-middle-class children (as in the California study mentioned above). All these data are seen in a new light when interpreted in terms of modernizing and de-modernizing experiences.

In other words, just as an individual's I.Q. may change in correlation with his journeys through the institutions of modernity, so may the mean I.Q. of entire groups. The more closely a given group relates to the demands of these institutions, the higher its mean I.Q.; conversely, the more distant a group is, the lower its mean I.Q.

The role of the family

The evidence just discussed, though relating to individuals, is basically macro-sociological. There are other data pertaining to the makeup of individual families and their contribution to socialization, as these relate to I.Q. These data have been widely discussed following the publication of Christopher Jencks' *Inequality* (al-

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though many actually derive from James Coleman's monumental study on social environment and schooling), especially since they challenge the liberal notion that schooling will affect or "bring out" the intelligence of children. As Jencks put it, "Variations in what children learn in school depend largely on variations in what they bring to school, not on variations in what schools offer them." This has logically led to an increased interest in the factors that structure the child's putative intelligence, as measured by I.Q., before he comes to school.

3. *I.Q. and family size.* It is now clearly established that I.Q. and family size are related, not only in this country but also in other advanced industrial societies (notably England, Germany, and Holland). Small families have more intelligent children, in terms of I.Q. scores; as family size increases, I.Q. scores decline. These data have never been adequately interpreted. It has been argued that more intelligent parents have smaller families, or that larger families tend to have fewer material goods, or that larger families do not allow a high degree of parental attention to each child. The first argument is hardly persuasive; the other two may have some validity. What Jencks has definitively shown (to his own ideological distress, to be sure) is that family size is more significant than class in its effect on I.Q. The paradigm I offer throws new light on this cluster of data when taken together with even more startling data relating I.Q. to birth order.

4. *I.Q. and birth order.* This correlation has been established for some time. Francis Galton had already found in the 19th century that it was an advantage to be an oldest or only son. The most striking findings were reported in 1973 in a Dutch study by Lillian Belmont and Francis A. Marolla. Based upon a very large sample of the male population of Holland, the study found that first-born children tend to be more intelligent (as measured by the Raven performance test) than second-born, second-born more intelligent than third-born and so on down the line. These data were controlled for class; they hold throughout the class system. The data further show that the birth-order factor is greater in smaller families (two, three, or four children) than in larger families and in urban rather than rural families.

These data, unlike those concerning family size, exclude genetic explanations outright. It is possible, as with the data on family size, to advance an explanation in terms of the social quality of parent/child relations, though the data on the larger families and the rural families make that strategy problematic as well. But an expla-

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nation is possible by using the new paradigm and taking the data on family size and birth order together.

Child psychology has shown that the fundamental cognitive apparatus of the individual is formed in the early years of life. This always takes place in a specific social context and it is a relatively small number of adults (the "significant others" of George Herbert Mead), normally the parents, who are the prime agents of this cognitive formation. These adults *mediate* the social world to the child. Parents closely related to the structures of modernity (such as the Dutch city-dwellers) will mediate these structures to their children, transmitting precisely the kind of modern, cognitive consciousness measured by I.Q. scores. The greater the interaction between the modernized parents and the child, the higher the child's degree of "modern consciousness." The intensity of interaction, however, declines as family size increases. In larger families, children—and especially the youngest children—have the social world mediated to them not so much by their parents or by other adults, but *by siblings who are themselves children*. This by itself makes for a "weaker" mediation. But more important, in larger families there is a diminished role for adults in the whole socialization process—and thus an increased role for a child's or more probably an *adolescent's peer-group culture* as the prime agent of socialization. Everything known about this type of peer culture points up its instinctively and profoundly non-modern character—it is tribal, "primitive," even "barbarian." The structures of "modern consciousness" do flow through this medium—but inevitably in an attenuated and modified form. This less-than-modern peer-group culture is more important for socialization in the large than in the small family, and for younger than for older children.

This interpretation of the effect of peer-group socialization on the modernization of consciousness, and thereby on I.Q. scores, has wide implications for any educational practice that emphasizes peer-group interaction over interaction with adults—which may help to interpret not only the peculiar California data but the overall decline in national I.Q. scores. Put simply, "progressive" education is not conducive to high I.Q. scores, because it is de-modernizing by relying on peer-group socialization. (The irony of this, in view of the all-too-modern ideology of "progressive" educators, can only be noted in passing).

The new paradigm allows for some empirically testable hypotheses concerning the data on families. It may be hypothesized, for instance, that the closer siblings are in age, the greater the I.Q. dif-

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ferences between them will be: The mediation of "modern consciousness" to a two-year-old child by, say, his four-year-old sibling is likely to be "weaker" than the comparable mediation by a 12-year-old sibling. Or it may be hypothesized that any group of modernized parents, even among the upper-middle class, who leave "the system" and gear the socialization of their children to a counter-modern subculture (as in communes) will have children with lower I.Q. scores. At present, there are no data suitable for the testing of these hypotheses; they are only mentioned to suggest that the paradigm is eminently "researchable."

More light on the family

5. *I.Q. and gifted and retarded children.* In the 1950's, a study by Robert E. Faris had already pointed out that "genius children" were likely to come from homes in which there was maximum interaction between parents and children (in isolated ethnic communities, small families, one-child families)—and, conversely, minimal influence from peers. These findings have been greatly strengthened by subsequent studies, such as the 1962 study of gifted children by J. W. Getzels and P. W. Jackson *(Creativity and Intelligence)* or the 1959 study by L. M. Terman and Melita H. Ogden *(The Gifted Group in Middle Life: Genetic Studies of Genius)* of Vassar College graduates. The data indicate that gifted children come from homes in which they are pushed, sometimes relentlessly, into academic performance. Getzels and Jackson found that more intelligent children (as measured, of course, by I.Q. scores) tended to have "vigilant," "critical," and "less accepting" mothers, while children deemed to be less intelligent (though possibly more "creative") had much more "understanding" and "tolerant" mothers. Almost identical data come from the Vassar study, where high I.Q. scores were found to be positively correlated with some situations in which parents push their children into "performance"—performance in terms of an educational system geared to the demands of a technological-rationalistic society. In terms of the new paradigm, this means a situation in which "modern consciousness" is "strongly" mediated.

The data on retarded children are also consistent with the paradigm. (Retardation is likewise defined in terms of I.Q. scores.) The 1964 British study by J. W. B. Douglas provides dramatic evidence. On the basis of their measured I.Q., some children were classified as borderline cases, and their placement in schools was

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predicted. It was found that borderline children with parents who were ambitious on their behalf obtained 23 percent more places in academically rigorous "grammar schools" than predicted, while children with non-ambitious parents obtained 69 percent fewer places than predicted. Generally, data in America and elsewhere clearly show that direct, constant, and intensive adult interaction is a major factor—if not *the* major factor—in combating the handicaps of retarded children and in "raising their intelligence" as measured by I.Q. tests. An increase of more than 20 points in measured I.Q. has frequently been achieved by shifting a child from a situation in which parental interaction was absent into one in which it was present. The data comparing the development of retarded children in institutions with those in parental or foster homes overwhelmingly point in the same direction.

6. *I.Q. and social class.* There is, of course, a wealth of data showing the relationship between social class and educational achievement (including achievement on I.Q. tests). These data continue to be important, despite the dramatic finding by Jencks that only about 40 percent of a child's success can be traced to his class background. The present paradigm suggests, however, that the data can be interpreted in a different way. It is not simply that educational achievement reflects a class system, so that those who start out with the "correct" attitudes (that is, children from higher-class backgrounds) have a built-in advantage. Rather the upper-middle class has a much more direct relation to the central structures of modernity, especially those of technology and rationalized behavior (e.g., in a bureaucracy). Consequently, upper-middle-class homes mediate to children the consciousness appropriate to these structures in much better ways than do working-class or even lower-middle-class homes. *This* fact gives the upper-middle-class child an advantage in coping with the demands of educational institutions—which, it should be stressed, are precisely intended to internalize in children the capacity to function in a technological and rationalistic world. This interpretion is strikingly borne out, incidentally, by findings from the socialist societies of Eastern Europe. Despite government policies that discriminate against them in the institutions of higher learning, children with "bourgeois" backgrounds continue to be more successful than their working-class peers. This is not because the educational institutions of, say, Hungary are "corrupt," but because they must prepare children for a society as technologized and as rationalistically bureaucratized (indeed, *more* so) than Western societies.

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Reorganizing the data

The new paradigm shows its utility not only in reinterpreting a miscellany of I.Q. data but also in reorganizing data along quite different lines. More specifically, it permits a new look at the way in which I.Q. tests are initially constructed. At the moment, data reorganized according to the new paradigm do not yet exist, and will only come into being through research based on hypotheses stemming from it. However, it is important at least to indicate briefly what such data would look like.

There are now various tests used to measure intelligence—most frequently the Stanford-Binet, Wechsler, and Leiter tests, but others as well, such as the Raven performance test. A lot of ingenuity has gone into efforts to safeguard the tests against environmental factors, such as class-specific vocabulary, familiarity with specific pieces of literature, advanced mathematical skills, or competence in a language other than English. To some extent, these safeguards free the tests from overtly narrow class, ethnic, or racial biases. However, no one has succeeded in constructing a test that is antiseptically "culture-free." It is now possible to pinpoint this failure more sharply on the basis of the presuppositions of the paradigm.

Any human culture transmits certain bodies of knowledge. It may be possible to test intelligence in such a way that what is measured is the general ability to acquire knowledge rather than the actual acquisition of specific items of knowledge. However, in addition to the contents of knowledge, a culture also transmits certain forms of consciousness through which these contents are internalized. In the language of the paradigm (following Alfred Schutz), these forms may be called *the cognitive style* of a particular culture. Four components of the cognitive style of modernity, relevant to contemporary measurements of intelligence, can be quickly elucidated.

The first is a high level of abstraction, by far the most important as far as the measurement of I.Q. is concerned. Some degree of abstraction is certainly intrinsic to human consciousness, and presumably characterized it even in Neolithic times. What is peculiar to "modern consciousness" is its very high degree of abstraction. Its social roots are to be sought in the cognitive requirements of science, technology, and economic or social behavior that has been "rationalized." This emphasis on high abstraction is built into the contemporary educational system—and, not surprisingly, is central to all instruments designed to measure intelligence. This built-in emphasis on abstraction, however, thus negates any efforts to make

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I.Q. tests "culture-free," for it reflects a crucial component of *modern* culture.

In the controversy over I.Q. differences between American whites and blacks, Jensen stressed that blacks show low performance precisely on abstract material—that is, on material *not* dependent on specific cultural information. So (according to Jensen) their low scores cannot be explained by "cultural deprivation." Yet a similar pattern was found by Goddard in his I.Q. tests of immigrants in the early years of this century; he actually wrote, "These people cannot deal with abstraction." Let it be emphasized that this statement included, of all people, Jewish immigrants! Similar data pertain to white children from isolated rural and mountain groups and first-generation Chinese-Americans. The new paradigm sheds light on all of these data: The "cultural deprivation" (to use this ultimately inappropriate term) consists *not* in the lack of specific knowledge or vocabulary, but in the lack of a centrally important component of the cognitive style of modernity—a high degree of abstraction, which all I.Q. tests simply equate with intelligence.

The second component is "componentiality"—the ability to break down reality into isolatable components, to disassemble and reassemble them in ever new combinations (a central element of the "technological mentality"). This involves sharpening the cognitive ability to permit focusing on one among many possible elements and blocking out all elements not relevant to the task at hand. This is obviously a very important capacity if an individual is to score high on I.Q. tests.

The third component is "multi-relationality"—the ability to keep a large number of relationships in mind simultaneously, to shift easily from one aspect of reality to another. This is another important trait of modern people; city dwellers (quite aptly) refer to themselves as "quick," in contrast to the "slowness" of a rural or small-town mentality. Once more, this trait is highly relevant to successful performance on an I.Q. test.

Finally, there is "future orientation." Modernity is peculiarly oriented toward the future. Reality, the arena of carefully planned projects, is regarded as "makeable." This capacity for long-term planning—for foresight in the service of projects, for what psychologists call "deferred gratification"—is itself taken to be a sign of intelligence. That equation is also "culture-specific," reflecting yet another peculiar component of the modern cognitive style. But quite apart from the degree to which this component is directly built into the I.Q. tests (it may not be in all of them), it is directly

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related to the attitude with which one approaches such tests in the first place. After all, test-taking is an intrinsically boring and meaningless activity in terms of immediate satisfactions, and is only interesting and meaningful if the individual taking the test views it in terms of long-range ambitions.

A new view of intelligence

It should not be difficult to see that the new paradigm, if given any sort of hypothetical credence, puts the data pertaining to the issue of the I.Q. differences between whites and blacks in an altogether new light. Rejecting the racist notion that whites are more intelligent than blacks is not the end but the beginning of the problem. For the problem of the I.Q. discrepancies cannot be solved by trying to construct tests that are more adequate in terms of "black culture," if the fundamental problem is precisely the relationship of that culture to the core structures of "modern consciousnes," *not* to a supposedly antagonistic white culture. If I.Q. tests measure "modern consciousness" rather than intelligence, the data simply indicate that, because of easily identifiable historical factors, American blacks represent a less modernized segment of the population. This fact, if it can be established as a fact, is neither good nor bad; its evaluation will depend on how one views modernity (by no means a foregone conclusion).

Moreover, if this interpretation is correct, no environmentally oriented psychologist will be able to prescribe a strategy to overcome this hurdle—for "modern consciousness" is part and parcel of the very discipline of psychology, no matter whether practiced by whites or blacks. Neither the elimination of racism nor (in the most extravagant egalitarian fantasies) the overthrow of the class system would eliminate the problem, for race and class (whatever else they may be) function in the area of I.Q. scores as carriers of "modern consciousness" rather than as independent variables. The scientific challenge posed by the proposed paradigm is to delineate more precisely the constitution and the range of "modern consciousness" in American society, and to situate black Americans accordingly.

It hardly needs adding that this would not eliminate the political problem, although it would be restated in considerably different terms. There certainly continues to be a problem of racism in American society. There is also, however, the additional political problem of an educational system that is unidimensionally geared to the

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requirements of technological and bureaucratic modernity. This problem was most sharply singled out by the counterculture and to some extent by the early New Left in the late 1960's—to be sure, in a singularly inept and intellectually muddled fashion. But it has not yet been satisfactorily dealt with. Indeed, none of the questions raised by the new paradigm is easily answered. Yet they are inevitable—once one believes that there are many forms of human intelligence, both individual and collective, that relate differently to specific sociocultural constructions. The issue, then, is not whether one group is more intelligent than another, but what particular form of intelligence (and *ipso facto* of cognition and consciousness) is rewarded and needed in society. So the final political, as well as theoretical, question concerns the possible range of American pluralism.

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

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Regulation, social policy, and class conflict

PAUL H. WEAVER

Some time ago I received a letter from a friend of mine, a political scientist who is an author of one of the best-selling introductory textbooks on American government. He and his co-authors were preparing a revised edition, and they wondered if I would be willing to review the chapters on government regulation of business in light of the reporting and writing I had done on the subject for *Fortune* magazine. After a certain amount of haggling over the fee—in practice, the authors' liberality with other people's money (in this case the publisher's) was not what one would have guessed from their political views—I accepted. Shortly thereafter the book arrived, and, curious as to what it would have to say, I immediately opened it and started to read.

The theme of the chapters in question was straightforward enough: Government regulation of business, they insisted, is a disappointment at best, and more often than not an utter failure and scandal. Its purpose is to make private economic activity safe for liberal democracy by remedying imperfections in the marketplace that prevent business activity from being self-regulating in the manner posited by Adam Smith. Yet in the overwhelming majority of cases, according to the textbook, this purpose does not even come

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close to being achieved. The regulatory agencies do not control business power, they are controlled by it. They do not serve the public interest, but promote special interests at the expense of the public.

These conditions prevail, the chapters suggested, because the politics of the regulatory agencies are dominated by what some political scientists have described as an "iron triangle"—a coalition made up of the regulated industry, the regulatory agency, and the Congressional subcommittees with jurisdiction over it. Exploiting the generality of the agency's legal mandate and the breadth of its official powers, the members of this unholy trio so arrange things that regulatory policy works to their own narrow advantage rather than benefiting the people as a whole. And they can do this with impunity, year in and year out, because their interest in regulation is intense and direct, whereas that of the public is weak and diffuse and so goes unrepresented. In short, the textbook argued, the politics of regulation is an exercise in subversion and injustice, and the lesson it teaches is that the institutions of liberal democracy are impotent in the face of special interests, especially business interests.

None of the text's account of government regulation was unfamiliar to me, nor will it be to any other student of the subject; it represents a reasonably accurate thumb-nail sketch of the social-science and journalistic literature on the regulatory agencies. Nevertheless, within minutes I found myself dismayed, and by the end of the first chapter I was aghast.

Now I will admit I was put off, perhaps to an unreasonable extent, by the resolute vagueness of the exposition (intended, apparently, to connote objectivity), by the relentless, if covert, editorializing, and by the absence of persuasive detail. I also was irritated by the authors' failure to convey a sense of the diversity of social-science interpretations. The differences between "capture" theories of regulatory failure like that of Samuel P. Huntington, "life-cycle" theories such as the one advanced by Marver Bernstein, and "original intent" theories of the sort proposed by Gabriel Kolko and George Stigler, were scarcely broached.[1] Little was made of the

[1] Each of these three theories proposes a different way to explain why regulatory behavior benefits special interests rather than the public. Invoking a military metaphor, Huntington posits an out-and-out political "capture" of the agency by the regulated industry. Bernstein, preferring a Darwinian image, suggests that agencies begin by advancing the public interest but, through a natural evolutionary process, slowly lose their sense of mission and eventually lapse into serving special interests. Writing on the basis of historical reseach—

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competing argument, developed by such scholars as Louis Jaffe and James Q. Wilson, that the real bias of the regulatory agencies is not that they favor the regulated but that they have an enormous stake in regulating per se, and that the "special interests" the agencies really serve are those involved in the regulatory process itself—lawyers, judges, environmental consultants, business lobbyists, and so forth. Moreover, the text almost completely ignored the fascinating body of empirical research, mostly by economists, on the often perverse practical consequences of regulatory programs. The author most frequently cited in the footnotes was not Merton Peck or Sam Peltzman or Roger Noll or Paul MacAvoy but—Ralph Nader and his various *doppelgangers.*

Yet my quarrel was not really with the textbook, which is not bad as such things go. What mainly horrified me was that the social-science theories the textbook was describing bore no relationship worth speaking of to what I had observed and pondered during some three years of writing about government regulation of business.

The "iron triangle"

Consider, to begin with, the political processes that surround the older regulatory agencies—those founded between 1887, when the Interstate Commerce Commission was established, and the outbreak of World War II. With exceptions, most of these agencies are cartel-like in structure and effect; they are organized on an industry-by-industry basis and are more or less mandated to protect as well as regulate. Characteristic examples are the ICC itself (which regulates railroads, trucking, and barges), the Civil Aeronautics Board (airlines), and the Federal Communications Commission (television, radio, and telecommunications). These are the agencies to which the regulatory literature has empirical reference, so it is not surprising that there should be some points of correspondence between their actual behavior and the social-science account of it. Yet even in the case of these older agencies there has arisen in recent years a large discrepancy between social science and reality.

Since the fall of 1974, for example, there has been underway in

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and from very different political viewpoints—Kolko and Stigler argue that the regulatory agencies have not in general lapsed from their proper mission, but were always intended to serve special interests. The FDA, Kolko maintains, was established at the behest of big meat packers who wanted to eliminate price competition from small meat packers. According to Stigler, the ICC was created at the urging of some railroads anxious for government help to maintain the faltering railroad cartel in the late 19th century.

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Washington a concerted, broad-based, and so far fairly successful movement to reform, and in some instances to abolish, the older regulatory programs. This movement is the undertaking of a peculiar coalition of *laissez-faire* economists, conservative Republicans, "consumerists," and liberal politicians. The two former groups are motivated particularly by their beliefs about limited government; the two latter seek to save consumers money and to deprive business of what they regard as illegitimate political advantage.

According to the political science of regulation, this movement for deregulation simply shouldn't exist; the public interest in regulation is supposed to be inherently too diffuse to sustain any significant, ongoing challenge to the hegemony of the "iron triangle," whose members are supposed to be able to turn regulatory programs to their own selfish purposes with comparative ease. Yet in the real world, just the opposite is the case these days. A deregulatory movement does exist and has made considerable headway. It has been pushed enthusiastically by the Council of Economic Advisers, the Antitrust Division of the Justice Department, elements of the Office of Management and Budget, and other agencies in the Executive Branch. It has enlisted the support of two Presidents. It has strong backing from liberal Democrats as well as from conservative Republicans on the Hill, and is being carried forward by a number of Congressional subcommittees, including several whose members ought to be in the front ranks of those defending the "iron triangle." Already the deregulators have had some successes. They have lessened somewhat the ICC's powers to set railroad rates, and they have pushed through legislation prohibiting state fair-trade laws. This past year, with strong support from Senators Cannon and Kennedy and the endorsement of President Carter, a bill to cut back airline regulation substantially has progressed to the point of enactment in the Senate. Passage in the House, though not a certainty, is entirely possible. And significant reforms in other agencies could well be in the offing, too.

The case of airline deregulation illustrates with particular force just how misleading and fallacious the standard political-science account of regulatory politics has become. The theory of the "iron triangle" holds that regulatory agencies are always and everywhere the unyielding defenders of their programs and prerogatives. The reality in this case is that the CAB itself has been one of the most active advocates of airline deregulation. Under two chairmen—first John Robson, now Alfred E. Kahn—the five members of the CAB have unanimously asked Congress to curtail their agency's power

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to determine airline rates and routes. Even more astonishingly, the CAB's professional staff has come out in support of the same idea—and it did so before the commissioners did. Two years ago, a committee of senior civil servants at the board issued a long report, the key conclusion of which was that the CAB should be relieved of a large portion of its powers.

The theory of the "iron triangle" also says that the typical regulatory program is defended to the death by the regulated industry. In the case of airline deregulation, the reality is that the Air Transport Association (the trade association of the scheduled airlines) does not have a position on regulatory reform. Several carriers, including the nation's biggest airline, United, favor a measure of deregulation, and barely half the members of the industry are actively opposed to major reform legislation.

The literature further holds that Congressional subcommittees are a mainstay of the "iron triangle" and can be counted on to turn back any Congressional pressures for change. In the case of airline deregulation, the reality is that Senator Howard Cannon of Nevada, who is chairman of the Senate Commerce Committee's subcomittee on aviation, has been publicly committed to airline deregulation for almost two years now; that his subcommittee has reported a deregulatory bill to the full committee; and that the full committee has reported a bill to the whole Senate for a vote. The House subcommittee, though not yet as active as its opposite number, could well become so. Its chairman is also on record as favoring airline deregulation.

In other words, the "iron triangle" that should be effortlessly smashing the deregulators' assault on the CAB is doing nothing of the sort. It has scarcely a single member who reliably defends regulation, and most of the actors who should be supporting CAB policies these days are busily attacking them! The airline case, though extreme, is not an isolated instance. Similar weakness is visible in other "iron triangles" today—in the House subcommittee on communications, which has been conducting a root-and-branch review of FCC regulatory programs; in the Antitrust Division, which has urged repeal of the Robinson-Patman Act; and in many institutions concerned with banking regulation, which had begun an agonizing reappraisal of that policy area long before Bert Lance began—or ended—his ill-fated stay in Washington.

The fact is that in a great many regulatory arenas the "iron triangle" no longer exists, or has been severely weakened. (One regulatory reformer now speaks of a "rubber triangle.") The standard

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political science of government regulation is simply in error when it asserts that regulatory policy is always and everywhere controlled by the regulated, that it is essentially immune to outside criticism and reform, and that the existence of the "iron triangle" thus demonstrates a deep contradiction at the heart of American democracy. The truth is that the "iron triangle," where it exists, was and is a political coalition like any other—sometimes successful, at other times not, and always dependent over the long run on the good opinion of the people.

A new coalition

In fairness, it must be said that the theory of the "iron triangle" was an honest mistake. The scholars who propounded it did so, for the most part, on the basis of careful research, and if they overgeneralized their findings, their work remains useful as an account of episodes or eras at the agencies in question. And yet, even as description, the literature on regulation is getting to be very misleading. Over the past decade, the Federal regulatory establishment has been greatly expanded by a long series of new laws in the areas of health, safety, and environment. For a variety of reasons—not the least of which is that legislators or their aides are aware of the social-science literature—the new regulatory agencies are utterly unlike the old ones. And since the new agencies as a group now far overshadow the old ones by any measure one might invoke—social impact, number of people employed, amount of Federal money spent, etc.—the literature, merely by remaining on the library shelves, has come to convey a seriously inaccurate impression of what regulatory agencies in general are like and how they work. (Scholars are only now beginning to do serious research on the behavior of the newer agencies.)

For example, the literature says that government regulation of business typically is based on terse statutes that confer extremely broad powers on the agencies and provide little specific policy guidance save to enjoin the regulators to act in the public interest. As a result, according to the literature, regulatory agencies have legislative as well as administrative functions and therefore are particularly vulnerable to pressure from special interests.

This is indeed a reasonable statement to make concerning the ICC, FCC, CAB, and most of the other older regulatory agencies. But it isn't at all true of most of the newer ones. Typically, the laws establishing these newer agencies are extraordinarily lengthy and

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specific. The Employee Retirement Income Security Act, under which the IRS and Labor Department jointly regulate private pension plans, runs to more than 200 pages and spells out in excruciating detail what kinds of information are to be gathered by which bureaucrats, when the information is to be collected, and even how often they are to repeat the process. The Environmental Protection Agency administers statutes that fill hundreds of pages in the Federal Code. The Clean Air Act is so specific that it spells out precise pollution-reduction targets and timetables and leaves the EPA virtually no discretion whatsoever. And these detailed specifications have teeth in them. For the laws establishing the New Regulation typically give nearly everyone an all but unlimited standing to sue the agency in question for any seeming failure to do precisely what the law tells it to do. Citizen groups and other organizations have made liberal use of this opportunity, and the courts have not been notably latitudinarian in their reading of the statutes.

The literature on regulation also says that regulatory agencies are prone to cooptation by the regulated interests because they are organized by industry. That may be true of the Old Regulation, but it isn't the case with the New. The new regulatory agencies were deliberately organized along functional lines, and their jurisdictions therefore cut across industry boundaries. The EPA, for example, deals with pollution problems created by all industries, and OSHA regulates safety and health conditions for workers in all industries. The Consumer Product Safety Commission controls the safety of virtually every consumer product on the market and so involves itself in the design and marketing of everything from rag dolls to power lawn mowers. The new regulatory agencies are accordingly resistant to cooptation by any single industry. If they are vulnerable to cooptation at all (and they are), it is to cooptation by safety- or environment-oriented groups, not by business organizations.

The social-science literature also paints a picture of a comfortable, cooperative relationship between regulator and regulated. That typically is the case with the old regulatory agencies, whose employees usually do feel responsible for the economic well-being of the industry they have jurisdiction over—often, as with the CAB, because the law explicitly instructs them to. But this is not at all true of most of the newer regulatory programs. They were established to operate as the adversaries of the interests they regulate, and typically it is as adversaries that they administer the law. Not, to be sure, that they have much choice in the matter. The New Regula-

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tors for the most part are mandated to pursue their appointed goals more or less singlemindedly, with little or no concern for the cost and consequences of the pursuit. The EPA, for instance, is explicitly forbidden by law to pay attention to cost in setting and enforcing the nation's primary ambient air-quality standards. Similarly, OSHA may not take account of the cost of health regulations except in the extreme case that they might push a company into bankruptcy. By and large, the new regulatory agencies are true to the spirit of these laws, and where they are not, suits by environmentalist, labor, or other such groups put them back on the straight and narrow.

Thus, in the new regulatory agencies there is no traditional "iron triangle" at work behind the scenes. To the contrary, the New Regulation is controlled by what can only be described as a *new* "iron triangle" made up of public-interest groups, the press, and the Federal government as a whole (especially the courts and Congress). Whereas the members of the old "iron triangle," at least while it lasted, were responsive mainly to the concerns of business, the members of the new "iron triangle" are motivated by a concern for health, safety, and the environment—and by a passionate sense of opposition to the members of the old "iron triangle." The new "iron triangle" is not omnipotent, but today it is in the driver's seat as far as the New Regulation is concerned. It is significant, for example, that the movement for deregulation, which is strongly supported by the members of the new "iron triangle," addresses itself only to the Old Regulation; the New Regulation has so far been exempt from its animus, and is likely to remain so.

Some regulatory successes

The social-science literature's lurid overstatement of the power and permanence of the old "iron triangle," and its failure for some 10 years now to acknowledge the political and institutional realities of the New Regulation, are not random errors. They are part and parcel of a larger undertaking—that of declaring regulatory programs to be failed acts of public policy. According to the literature, the agencies are so encumbered by special interests that their activities serve no identifiable public interest. Regulators may try to give people the impression they are rendering a public service, but these efforts are a fraud—mere "symbolic politics," in the phrase of one widely footnoted political scientist. The reality, the literature maintains, is that regulation is a rip-off without redeeming social value.

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The notion that regulation is the antithesis of proper public policy and that it is impotent to do anything but harm to the common weal is, to me, truly bewildering. It bears no relationship to anything I have observed, and—what is at least as important—it bears no relationship to any intelligible conception of the public interest in relation to private interests.

To be sure, government regulation serves all kinds of private interests. It protects the airlines and truckers from most relevant kinds of competition. It enables well-connected Washington lawyers to make $500,000 a year. It gives small businessmen a degree of protection against the effects of price discrimination. It has created an enormous and growing market for air-pollution-control equipment and the services of workplace-safety consultants, who are doing very nicely these days. It has raised prices in the paper industry by driving out of production the old, marginal paper mills that were the first to cut prices when demand was soft but were ferocious polluters of the waterways and thus had to be closed down when EPA's standards went into effect.

Regulation has done all these things and many more—but this in itself is not evidence that it does not serve public ends. Yet this is what the political science of regulation suggests—that the public interest and private interests are at war with each other, and that in the nature of things a program serving the one cannot serve the other. On this assumption, the fact that private interests intervene in regulatory affairs or benefit from regulatory policy is taken to signify that public ends are being subverted.

Not only is this notion wrong in general, it is also profoundly misleading as a guide to understanding the reality of any particular program or agency. For it is impossible to contemplate regulation with even a half-open mind and conclude that it is powerless to promote public goals or to advance a conception of the public interest. For example, it is obvious to even the most casual observer that the New Regulation actually does pursue the goals of health, safety, and a clean environment, even when they collide with private interests. The EPA has already required private parties, including some of the nation's biggest and most influential industries, to spend tens of billions of dollars on pollution control. By the mid-1980's it will have required the direct investment of well over a hundred billion dollars, and God only knows how much more in operating expenses, inflation, and other social costs.

This enormous reallocation of national resources required by the New Regulation has already begun to produce many of the de-

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sired results. Water quality has improved substantially in many areas. Ambient air quality has risen in a number of important respects since the EPA went to work five years ago. The number of deaths attributable to accidental ingestion of aspirin by infants has fallen dramatically since child-proof caps on bottles of aspirin were introduced, first at the suggestion of the FDA and later under the order of the Consumer Product Safety Commission. Auto emissions are now some 90-percent lower than they were before auto pollution became a concern of public policy. To be sure, not all regulatory programs have achieved very much in terms of their ultimate goals. Despite the billions that have been spent on occupational safety and health measures, it appears that the sickness and injury rates of the domestic labor force have not been changed significantly. Yet this seems less a reflection on OSHA's political integrity, which is nothing if not formidable vis-à-vis business organizations, than a consequence of the inherent difficulty of lowering injury rates.

Public ends and private interests

The older regulatory agencies also serve public ends, although these admittedly are harder to discern. Partly this is because their enabling statutes do not lay down any concrete public purposes for the regulators to pursue. And partly it reflects the fact that the most obvious and immediate effect of their programs is simply to transfer wealth from one part of the population to another—from the risk-accepting to the risk-averse in the case of banking regulation, or from certain kinds of shippers to certain categories of truckers in the case of the ICC's regulation of trucking. Yet there is no necessary contradiction between serving public interests and private interests at the same time, and if one is willing to entertain the notion that the Old Regulation might be serving intelligible public ends (as the social scientists of regulation in general are not), it is possible to discover a number of these.

One public purpose clearly advanced by the Old Regulation is that of saving "free enterprise" from big business—i.e., of preserving competition (or at any rate competitors) to a greater extent than the "natural" dynamics of a free market would allow .The Antitrust Division and Federal Trade Commission do this by restraining monopolies, trusts, and big companies generally. The Robinson-Patman Act does it by trying to curtail the natural advantages of big corporations in purchasing supplies. And the ICC and CAB, among oth-

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ers, do this by "rigging" the trucking and airline industries to permit more companies, and more small companies, to exist than would otherwise be the case.

Another public purpose that has been advanced by the Old Regulation is that of helping to integrate a diverse, localistic, continental population into a single, interdependent, national society. The older agencies have done this in many ways:

1. With the blessing of the FCC and state utility commissions, the Bell system has created an elaborate network of cross-subsidies, one effect of which, it appears, is to lower the price of telephone service to residential customers below its true cost. This encourages private users of telephones, for example, to speak with, and so to maintain ties with, friends and family even over long distances.

2. The FCC's informal requirement that a certain minimum of a television broadcaster's air time be devoted to public-affairs programming causes more public-affairs broadcasts, especially documentaries, to be shown than would otherwise be the case. This in turn has encouraged citizens to concern themselves with political affairs and has helped to create a genuinely national politics based on national issues and a national agenda.

3. The CAB's regulation of the airline industry has caused service levels to be higher than they would be in an unregulated market and has given airlines an incentive to operate excess capacity on their routes. This in turn has made air travel more attractive and accessible, especially for business travelers, which has enhanced the mobility of American society and increased nationwide social and economic integration without diminishing localism.

4. More generally, by establishing uniform national standards of safety, security, and the like in such industries as banking, securities exchange, food, and drugs, the Old Regulation has reduced the risks and costs of engaging in anonymous commercial transactions over long distances and has thereby helped to provide the benefits associated with larger, less fragmented, national markets.

The Old Regulation has also helped to domesticate and legitimate large corporate business. Americans have long been suspicious of big business, whose resources they perceive, not unreasonably, to be vastly disproportionate to those of an individual customer. The regulation of airlines, banks, and local utilities has arguably curbed corporate rapacity, and certainly it has eased consumers' mistrust. That is why public-opinion polls show that, in general, the most highly regarded industries in the United States are regulated industries—banks, electric utilities, and airlines, for example. Indeed,

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these three are among the most highly esteemed of all American institutions of all sorts, whether economic, religious, political, or social.

The Old Regulation has also helped to make America a nation of homeowners. By establishing the savings and loan association as something distinct from a commercial bank, for example, and by giving it special obligations to provide mortgage loans, banking regulation (together, to be sure, with the Federal tax code) has lowered the cost of homeownership relative to the alternatives, thus encouraging Americans to be homeowners and suburbanites. One may debate whether this is good or bad, but what cannot be questioned is that banking regulation has advanced a conception of the public interest.

Regulation as social policy

If government regulation of business isn't an interest-group ripoff, what is it? What role does it play and what meaning does it have in the American scheme of things? Obviously, this question goes beyond the scope of any essay (not to mention the state of our knowledge), yet some parts of the answer seem clear enough.

The first point that must be grasped is that, despite all appearances and representations to the contrary, government regulation of business is not primarily an instrument of economic policy. To be sure, it is conventionally spoken of as if it were. Defenders insist that regulation is intended to remedy "market imperfections" and to "internalize externalities," and their opponents counter with stories and studies illustrating the economic absurdities so often committed by regulatory programs. All such arguments, however, are beside the point. If regulation were really founded on a belief in markets, its scope would be virtually unlimited: *All* markets, after all, are significantly flawed. At the same time, government would not be so quick to replace market processes with administrative ones, since no market is by nature completely inoperative or beyond hope of reviving—not even those that we refer to, usually inaccurately, as "natural monopolies."

The real purpose of government regulation is not to correct the deficiencies of markets but to transcend markets altogether—which is to say, government regulation is not economic policy but social policy. It is an effort to advance a conception of the public interest apart from, and often opposed to, the outcomes of the marketplace and, indeed, the entire idea of a market economy. (That is why all economists, whatever their political views, end up being so critical

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of government regulation, at least as it works out in practice. They think regulatory policy should make sense economically—which, of course, it never quite does.)

The second thing that must be understood about government regulation is that, being social policy, it is a manifestation not of interest-group politics but of class politics. To be sure, interest groups are active in every regulatory arena. But government regulation is more than a narrow matter of "who gets what." It also asserts a set of values, a world-view, and policy of this larger sort is never created by mere interest groups, but by classes—groups that possess a distinctive "culture" and relationship to the means of production, and that intend to dominate and define the society, i.e., to rule. The class basis of regulation, incidentally, is one reason why so much regulatory policy is an intellectual scandal, as when it mandates zero pollution of the waterways by 1985 (which is lunacy even as an ideal) or allows the Bell system monopolies (e.g., over the manufacture of telephone receivers) that are not necessary to maintain a network of telephone service. When policy is not just a means to an end but a symbolic assertion of a class sense of destiny as well, government easily becomes an exercise in gratuitous excess.

With these two points understood, it is possible to grasp the central and controlling truth about this entire phenomenon—namely, that the two kinds of government regulation in the United States today represent the social policy of two different classes and embody radically different political philosophies. The Old Regulation, for the most part, is the social policy of that curious class of reformers, professionals, politicians, and businessmen around the turn of the century who blended the "populist" and "Progressive" impulses into a body of political views that eventually transformed a traditional, bourgeois political economy into the mixed corporate order we know today. The New Regulation, by contrast, is the social policy of what is often described these days as the "new class" —also largely professional and managerial, like its turn-of-the-century counterpart, but committed to "humanistic" work in the not-for-profit and public sectors, and generally hostile to the economic accomplishments and political vision of the Progressive era.

The Old Regulation is an expression of a much larger movement in American social history—the effort, which began in earnest around the turn of the century, to create a modern economy that would deliver the enormous economic growth and other social benefits made possible by large-scale, technologically-progressive, corporate

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capitalism without sacrificing the benefits of traditional, bourgeois "small business"—its economic efficiency, its natural legitimacy, and above all its capacity to make the ideal of individualism an economic reality. This broader effort was supported by an odd coalition of small businessmen and farmers, liberal economists, reformist politicians, and a new breed of corporate managers, and it gave rise to the corporation, modern transportation and communications, and other institutions as well as the Old Regulation itself.

The policies advocated by this energetic class of social innovators and political reformers pointed in divergent directions. On the one hand, through such statutes as the Sherman and Clayton Acts, they sought to break up excessive concentrations of economic power, and thereby to restore, insofar as possible, market conditions of the sort envisioned in classical economic theory. On the other hand, they also established a long series of cartel-like regulatory commissions explicitly intended to replace market processes with political and administrative ones. In part, the purpose of these commissions was to cushion "small business" against the rigors of the marketplace and the innate strengths of big business. And, as in the cases of the airline and telephone industries, their purpose was also partly to enable big corporate business to provide the social benefits of modern technology faster, or in greater abundance, than the market by itself would allow.

Yet though this class was both for the market and against it, for big corporate business and against it, for small business and also anxious to transcend its limitations, its position did have an underlying coherence: a clear and persistent dedication to basic values of the liberal tradition—science, economic growth, widespread prosperity, the rule of law, the idea of progress, and above all the primacy of the individual. It was the fate of the members of this class, however, to live at a time when traditional liberal forms were no longer compatible with the fullest possible realization of liberal social ends. The marketplace, for example, still performed many useful functions. Yet with the rise of the big corporation it seemed less and less effective in providing the social and political benefits inherent in the institution of small business. At the same time, the logic of the market prevented big corporations from realizing to the maximum practical extent the full benefits of modern technology—for instance, universal enjoyment of inexpensive, reliable, and high-quality telephone service. Thus the Old Regulation represented an effort to transcend traditional liberal forms like the free marketplace for the purpose of promoting liberal values.

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The New Regulation

The New Regulation could hardly be more different. It is the social policy of the new class—that rapidly growing and increasingly influential part of the upper-middle class that feels itself to be in a more or less adversary posture vis-à-vis American society and that tends to make its vocation in the public and not-for-profit sectors. Over the past decade it has come to be represented by a broad constellation of institutions—the "public-interest" movement, the national press, various professions (law, epidemiology), government bureaucracies, research institutes on and off campus, the "liberal" wing of the Democratic party, and the like. By means of its regulatory policy, the new class is, among other things, bringing about what Murray Weidenbaum has described as the "second managerial revolution." The first managerial revolution, of course, involved the displacement of the old bourgeois class by the corporate managerial class, and a corresponding shift from purely private economic institutions to quasi-public institutions like the corporation. The second managerial revolution is transferring power from the managerial class to the new class, and from quasi-public institutions to fully public ones—i.e., to the government.

The announced objective of the New Regulation is to promote health, safety, a cleaner environment, and a more open political process. But that is not all the New Regulation is about. For the members of the new class seem less interested in maximizing the overall health and safety of American society than in reducing the health, safety, environmental, and political costs of the modern capitalist order—which is a very different thing indeed, since liberal capitalism has itself brought about, and continues to sustain, large improvements in the health, safety, environment, and political life of the country. These benefits, to be sure, have price tags on them, but working to lower those social costs is not the same as seeking to increase the overall welfare of the society, as the record of the New Regulation itself shows. The now-infamous Thalidomide Amendments, enacted in 1962 to prevent the introduction of dangerous new drugs, appear to have delayed the introduction of all kinds of new drugs, safe and dangerous, to the point where more deaths have been permitted than prevented. Similarly, the efforts of Common Cause and other "reform" groups have considerably reduced the influence of traditional interest groups, e.g., labor, trade associations, and the like. But they have not thereby appreciably "opened up" the political process. They have merely transferred power from those who produce material goods to those who

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produce ideological ones—to the intellectuals, policy professionals, journalists, and "reformers," who are arguably much less representative of the American people as a whole than those whose influence has been curtailed.

Outcomes like these are not accidental. They faithfully reflect the underlying interests and ethos of the new class itself. With each passing year it becomes clearer that the real animus of the new class is not so much against business or technology as against the liberal values served by corporate capitalism and the benefits these institutions provide to the broad mass of the American people: economic growth, widespread prosperity, material satisfactions, a sense of nationhood, a belief in an open and self-determined future, and the many options and freedoms these make possible for ordinary citizens.[2] The real ire of the new class, and the fire-power of its social policy, are directed, not merely at those in business who (in Lewis Lapham's marvelous phrase) "go around making things without permission," but also, and perhaps especially, at the mass of Americans who go around doing and enjoying things without permission.

For instance, a cardinal principle of the New Regulation is that of "internalizing the externalities"—making manufacturers and consumers pay the social costs of modern goods and services. The idea, as an idea, does have a certain attractive neatness about it, and put into practice it does indeed cause the environment to get cleaner and products to get safer. But in practice it also raises the price of the goods and services in question, or decreases their utility. Either way, "internalizing the externalities" is a form of taxation, and taxes always discourage the production and use of the thing taxed. In this sense, the new class, though it marches under the banner of "consumerism," is in fact working against the widespread enjoy-

[2] To some readers, perhaps, this use of the word "liberal" will seem unfamiliar, even far-fetched; Americans today are accustomed to attaching that honorable term to other sorts of values and institutions, e.g., redistributing wealth. Yet at least from the time of Locke himself, the idea of economic growth and individual prosperity has been as central to liberal political thought as the more widely-known notions of individual rights, rule of law, and limited government. And the presence of this "materialist" aspect of the liberal tradition was no mere "historical accident." Economic growth, widespread enjoyment of material satisfactions, technological development, and other such phenomena are in fact necessary elements of the entire liberal vision of man and society and are inextricably interwoven with its other, more directly political and juridical features. Who says "human rights" or "constitutional government" or "science" must also say "economic growth"—or, in effect, speak a kind of theoretical and practical nonsense, at least from the liberal viewpoint.

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ment of consumer goods and services that liberal capitalism makes possible.

The hostility of the new class to acts of consumption by consenting adults is paralleled by a vigorous opposition to all institutions that promote consumption—advertising, the corporation, and above all the Old Regulation. It sees the Old Regulation in much the same light as social scientists do, as representing a kind of theft of the symbols and power of the state by interest groups for selfish purposes. Accordingly, the new class is at the forefront of the movement to deregulate such older regulated industries as trucking, the airlines, banking, and so on, at the same time as it seeks to extend regulation for its own purposes.

Understanding the problem

So it is obvious that government regulation of business raises some crucial issues for American politics and American social science. They are not, however, the issues that predominate in current discussion of this much-discussed subject. To critics associated with the Left and (what is by no means the same thing) the new class, the central issue posed by regulation is one of the integrity of democracy itself in the face of "corporate power" and "interest-group politics." But this, as we have seen, is a wildly misleading definition of the problem. While interest groups do happily graze in these pastures, the overriding truth is that the authority of American government is nowhere more dramatically demonstrated than in the regulatory agencies, which are a veritable cornucopia of public philosophies and social-policy enterprise. Indeed, if regulation raises an issue in this respect, it is the question of the fate of the traditional private sector, which has manifested a worrisome political and moral weakness in defending itself against both managerial and new-class notions about the primacy of bureaucratic, quasi-public, and public institutions.

Nor are the important issues of regulation the ones which figure so prominently in the arguments of economists, conservatives, and deregulators—for example, the question of whether a measure of "economic rationality" can be restored to this sector of public policy through the reinstatement of markets or the establishment of market-type mechanisms (effluent charges, for instance) or the infusion of cost-benefit consciousness into regulatory organizations. These, to be sure, are not utterly irrelevant concerns: Prodigality with other people's resources is the rule rather than the exception in

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the regulatory process, and with the explosion of new agencies in recent years, this habit of mind has been exacting a heavy toll on the nation's wealth and growth. Yet outside a narrow range these concerns seem to beg the question. Efficiency is desirable—but efficiency at what and for whom? Markets are useful, but to what extent do they suffice for the social control of the modern corporation, one of whose purposes is precisely to transcend markets?

The current debate over regulation is unsatisfactory, it seems to me, for a simple reason. Contrary to what nearly everyone has assumed for decades now, government regulation of business is not a political backwater or public-policy side-show, an affair of mere interest groups and narrowly economic concerns. To the contrary, it is a direct and consequential expression of the central social and political currents of 20th-century American life. As such it raises squarely, and in a peculiarly puzzling way, the ultimate issue of American politics: the meaning and fate of the idea of liberal democracy. Both the Progressive-managerialist class and the new class have an obvious connection with the liberal tradition, but both also are carriers of ideals and structures that, at the very least, do not sit comfortably with the liberal orthodoxy. The ethos of the Progressive class is mostly a familiar one whose lineage traces directly back to Lockean notions of reason, science, growth, and social harmony. On the other hand, its notions of transcending the rough and tumble of both the marketplace and democratic politics, and its unrelieved materialism, seem more than faintly heretical. The relationship of the new class to liberal values, it seems to me, is a good deal more problematic. In comparison to that of its Progressive-managerialist predecessor, the ethos of the new class, as if by a generational mutation, is by now so systematically statist, so indifferent to the liberal promise of individual autonomy and social abundance, so hostile to the achievements and aspirations of so many liberal institutions that it strikes me as being more heresy than not.

But whatever one concludes about these questions, liberalism is the issue. And that, of course, is the thing that our enormous literature on government regulation ignores above all. In part this is because so much of that literature is so tendentiously allied with the new class cause (writers are not without their own class interests), so anxious to discredit the Old Regulation, and so avid to justify the exercise of more and more state power over private persons and organizations that it literally refuses to acknowledge the realities that impress themselves so forcefully on even a casual observer of the regulatory agencies. And beyond that there is the

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fact that modern social science scarcely has the words to describe the ultimate dimensions of government regulation for what they are. To economists, regulation is chiefly a matter of mere pecuniary quantities and the narrow "efficiencies" envisioned by the idea of a market. To political scientists and journalists, the agencies are for the most part simply a battleground for an ongoing Armageddon between the "interests" and the people. All of which is to say that social science is as much afflicted as every other liberal institution by the one great weakness of modern liberalism: Being "pragmatic" and distracted by the promise of a progressive future, it has a hard time recognizing its organizing principles for what they are, and an even harder time remaining true to them. That, of course, is the problem of government regulation as well.

CONTRIBUTORS

Jude Wanniski, who is Associate Editor of *The Wall Street Journal,* writes editorials on economic and political matters. . . . Martin Anderson is a Senior Fellow at the Hoover Institution on War, Revolution, and Peace. . . . Brigitte Berger is Professor of Sociology at Long Island University. . . . Paul H. Weaver is Associate Editor of *Fortune.* His article is a revised version of a paper prepared for a volume on government regulation of business to be published by the Institute for Contemporary Studies. . . . Nathan Glazer is spending the 1977-78 academic year as a visiting scholar at the Russell Sage Foundation. His article is a revised version of a paper delivered at a conference sponsored by the National Legal Center for the Public Interest. Reprinted by permission of the publisher and adapted from the forthcoming book, *The Judiciary in a Democratic Society,* edited by Leonard Theberge (Lexington, Mass.: Lexington Books, D. C. Heath & Company. Copyright © 1978 by D. C. Heath & Company). . . . William J. Bennett is Executive Officer of the National Humanities Center (Research Triangle Park, North Carolina). Edwin J. Delattre is Director of the National Humanities Faculty (Concord, Massachusetts).

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Should judges administer social services?

NATHAN GLAZER

WHAT role should the judiciary play in overseeing, correcting, setting standards for, and directly administering social services? The question must be raised because, in recent years, judges have played an ever larger part in administering schools, mental hospitals, prisons, and other institutions. This is, of course, only one aspect of the extension of judicial power that has been the subject of a number of recent books (for example, *Disaster by Decree,* by Lino P. Graglia, and *Government by Judiciary,* by Raoul Berger) and many articles (for example, my article, "Towards an Imperial Judiciary," *The Public Interest,* Fall 1975). But it is a very distinctive aspect because it involves not only the establishment of a right, but the judiciary's intervention into the administrative details of institutions in order to implement the enjoyment of that right. Many court decisions with far-reaching effects and grave political repercussions never involve judges in actual administration—for example, the rulings concerning prayer in the schools, abortion, the death penalty, and the use of testimony in criminal cases. Those decisions set a standard, and the existing agents of government—school officials, state health agencies, lower-court judges, prosecutors, and policemen—are expected to adhere to it without ongoing supervision. But there are now increasing

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numbers of judicial decisions that involve fairly elaborate provisions for supervision and administration, specify in detail how existing agents of government are to operate, and almost inevitably provide for continued oversight for an indeterminate period by the court.

The model for such decisions is the school desegregation order, which includes a detailed and elaborate plan for school assignment, and may also require the closing of some schools, the construction and repair of others, the employment of additional personnel, the purchase or rental of buses and other equipment, specifically defined consultation with various elements in the community, elections to advisory boards, regular reporting, the employment of specified agents of the courts and their reimbursement at defined rates, fixed procedures for the suspension and expulsion of students, and so on. Orders that affect mental hospitals and prisons, or require bilingual education programs, may be just as elaborate. Orders affecting the operation of welfare departments have not yet reached this stage, but they do involve a direct hand in administration: In one Massachusetts case, for example, the state was required by a judge to hire a specified number of additional new social workers. Housing orders have also come to involve great specificity in elaborating requirements for action—for example, the *Gautreaux* decision in Chicago, which included detailed provisions regarding the kind of units to be provided, their location and design, and the like.

Can one legitimately distinguish between a judicial order that asserts a right without detailed provisions for how it is to be implemented by administrators, and the kind of order I have described? Undoubtedly the two shade into each other. Yet court decisions regarding school desegregation, housing, welfare, and the administration of mental hospitals and prisons seem to involve a very different kind of intervention from rulings in which a right is redefined or extended. At the simplest level, the extensive order with detailed requirements has immediate and definable budgetary consequences for governmental bodies; the more general decree asserting a right may have none. The extensive order goes beyond procedural requirements to substantive requirements: not *how* it shall be determined what prisoners need or what housing units should be built, but specifically *which* services prisoners should be provided with and exactly *which* housing units are to be built. There is undoubtedly some difficulty in distinguishing between the rights-pronouncing decree and the administrative-intervention decree; both may have enormous consequences for social policy. In his

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path-breaking study, *The Courts and Social Policy* (Brookings Institution, 1977), Donald Horowitz has selected four case studies of judicial action in social policy. Only one, to my mind, falls unambiguously into the category of what I am trying to distinguish as administrative intervention: *Hobson v. Hansen,* in which a district judge required a specific pattern of distribution of school department funds as well as annual compliance reports from the department.

Clearly, one difference between a decree asserting a right and an order going into administrative detail regarding the implementation of a right is this: The first is what appeals courts do, the second is what district courts do. But there is much more to the distinction than that, as is apparent from considering the impact of a court order on the administrators of some branch of social policy, and on the whole structure of social policy. Although a strictly procedural requirement or a general prohibition of certain actions may have a very wide-ranging effect on administrators and workers in some branch of government, an administrative order, with its more specific requirements or implications for budget and program, will have on the whole a more decisive impact: The range of freedom of the administrator and the executive is more radically restricted; the balance among branches of social policy is affected; the court or its agents are introduced above any other superior in the administrative chain. From the point of view of a constitutional lawyer—or a judge—this distinction may be hard to make, for the judge is simply proceeding along the chain of decisions required to vindicate a right. From the perspective of the administrator, or the executive, or the legislator, however, and from the point of view of the analyst of social policy, something quite new and radically different is taking place.

When judges rule

What general effect may we expect the expansion of the judicial role in social policy to have on social policy in the large? How are social-policy institutions being affected by judicial intervention? Will their performance be improved, or worsened? And in what respects may we anticipate changes in their performance?

This kind of concern has, on the whole, received less attention than some other kinds of questions—for example, regarding the legitimacy and constitutional basis of this expansion of judicial power—because up to now it has been lawyers rather than policy

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analysts who have dealt with the topic. This is understandable, since lawyers have long been used to dealing with the courts as a central institution, while policy analysts have not been so accustomed. From the point of view of the policy analyst, judicial intervention is still, for the most part, just that: ever more extensive and significant, but still operating at a substantial remove from the workings of social policy. Thus texts in the areas of housing or welfare are only beginning to pay attention to judicial intervention. The numbers of specific agents of a judge who issues sweeping orders—whether to integrate the Boston school system or to reform the prisons and mental hospitals of Alabama—are still remarkably few, compared to their impact. Down at the working level of social policy, the judicial order is fitted into the body of regulations and guidelines, just as legislation and executive orders are, and merges into the general system of rules under which an agency operates. To the working official, it may not be easy or useful to separate the components of the system of rules under which he operates into legislation, executive orders, and court orders.

Nevertheless, judicial decisions, remedies, and interventions are beginning to shape the entire structure of social policy. They are determining which of the factions disputing policies and their implementation are to be strengthened, and which weakened. They are determining which professional groups active in social policy are to be favored, and which neglected. They are significantly determining how resources within any given branch of social policy are to be distributed, and how they are to be distributed among the several branches of social policy.

Yet questions about the larger impact of a decision rarely come up in court. The judge is constrained to see or to assert continuity in the protection of constitutional rights, for he operates under the same unchanging provisions of the same constitution. He sees himself as responding to plaintiffs whose rights have been unrecognized, as simply perfecting the system of rights. This pleasing illusion permits him to ignore the impact of his decisions and interventions upon the structure of policy. If we were to tell a judge that his decision means that one of the various professions involved in social policy should have greater power than another, he would undoubtedly deny that this was his intention, and perhaps assert that such a result is irrelevant when it comes to determining whether there has been a violation of rights and how it should be remedied. But it is not irrelevant to the policy analyst.

It is useful to gain some insight into the mind of a judge dealing

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with these issues, and Judge Frank M. Johnson—who issued sweeping orders to restructure the mental hospitals and prisons of Alabama, and until his recent illness was President Carter's choice for head of the F.B.I.—gives us an intriguing glimpse. It is largely on his account that I have argued that the judge sees continuity and the enforcement of rights where the policy analyst sees a decision to raise one conception of, and one profession dealing with, a social ill above another. Judge Johnson's most striking theme in defending his actions as a judge is his insistence on the continuity between the decisions outlawing racial segregation and discrimination—in which he courageously played a pioneering role—and the decisions establishing standards for the management of branches of social policy. In a recent article in the *Texas Law Review* (May 1976), Johnson wrote:

> On far too many occasions the intransigent and unremitting opposition of state officials who have neglected or refused to correct unconstitutional or unlawful state policies and practices has necessitated Federal intervention to enforce the law. Courts in all sections of the nation have expended and continue to expend untold resources in repeated litigation brought to compel local school officials to follow a rule of law first announced by the Supreme Court almost 22 years ago. . . . In addition to deciding scores of school cases, Federal courts in Alabama alone have ordered the desegregation of mental institutions, penal facilities, public parks, city buses, interstate and intrastate buses and bus terminals, airport terminals, and public libraries and museums. . . .
>
> Desegregation is not the only area of state responsibility in which Alabama officials have forfeited their decision-making powers by such a dereliction of duty as to require judicial intervention. . . . State officials by their inaction have also handed over to the courts property-tax assessment plans; standards for the care and treatment of mentally-ill and mentally-retarded persons committed to the state's custody; and the procedures by which such persons are committed.

Overcoming state resistance

Judge Johnson glides, with scarcely a break, from judicial action banning segregation by race to judicial action imposing standards for treatment. To the policy analyst, these are radically different; to the judge, operating under the guidance of the simple but mightily expanded phrases of the Constitution, these are, in some crucial respects, the same thing, though of course the judge is aware that it is "extremely troublesome and time consuming" (in Judge Johnson's words) to determine just how mental hospitals should be run. One would think that the trouble and time make for a very different

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order of ruling from one insisting that pupils, citizens, travelers, patients, and prisoners not be segregated by race.

But it is undoubtedly true that the great expansion of judicial power that was necessary to overcome discrimination and segregation in the face of state and local resistance accustomed judges to move, on the argument of violation of rights, into very different areas, the administration of social institutions and the conduct of social policy. Insensibly, state resistance to desegregation provided the perspective from which the judge viewed state inaction in other areas or even—I would argue—simple state incapacity. The fact that the state did not know how to rehabilitate prisoners, or cure the mentally ill, or run a good housing project, or ensure that parents receiving money for the care of children raised them properly became associated, in the minds of judges, with resistance. For if the right to an unsegregated education continued to be denied because of unquestioned state resistance, did it not follow that it was likewise state resistance when the pronouncement of equally constitutional rights in other spheres was not accompanied by suitable state action to satisfy plaintiffs—resistance likewise to be overcome by ever more specific judicial requirements?

Overcoming Southern state resistance to school desegregation offered judges a model justifying detailed administrative intervention in order to make constitutional rights effective. In the same way, conditions that were, on the record, atrocious in some state hospitals and jails gave adequate justification, at least in the moral realm, for judicial intervention into areas that were, one has reason to think, not atrocious at all, whatever their discomforts. It is hard to believe that conditions in the Tombs in New York City or the Suffolk County jail in Boston, both of which were ordered closed by judges, were anything like the conditions described in testimony about Alabama prisons.

Nevertheless, once it has been established as precedent that inhuman conditions in jails can constitute violations of constitutional rights, it is possible to proceed along a chain of reasoning and find ever more conditions that may be considered violations of human rights. And once the judge has accustomed himself to studying the details of prison or mental-health administration, he will—after being educated by the testimony of expert witnesses brought by plaintiffs—begin to see other possibilities for improvement, far from the original violations that excited his anger.

Judge Johnson, for example, after describing conditions in Alabama prisons that might well be considered violations of rights on

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the moral if not on the constitutional plane (which I leave to lawyers)— e.g., 200 men using one toilet—moves on to other conditions that would be hard to consider violations of constitutional rights. Thus he tells us that 3,500 prisoners resided in facilities designed for 2,300. Without equating high schools with prisons, I recall that the high school I attended in New York City had three times as many students as it was built for. Or he asserts, "The Commissioner of the Alabama Board of Corrections testified that although the prison system required a minimum of 692 correctional officers, it then employed 382." Now it is a fact that administrators always need more personnel than they have, that they can always refer to some authoritative statement by some professionals that will justify their claim of understaffing, and that minimum staffing requirements set by professional bodies—whether for guidance counsellors in schools, or psychiatrists in mental hospitals, or social workers in welfare systems—are rarely achieved. Can a judge decide what degree of overcrowding or of unfilled manpower needs actually constitutes a violation of constitutional rights?

When he attempts to do so, many of his limitations in evaluating social administration come into play. The judge is generally limited to the evidence presented to him. The plaintiffs may do a better job than the defendants: There are often bright young lawyers and professors for the plaintiffs and less glittering counsel and dull civil servants for the defendant. Sometimes the civil servants who are formally testifying on behalf of the defendant will in effect join with the plaintiffs to present testimony to the judge justifying greater appropriations for staff and facilities from the legislature, thus hoping to get by judicial order what they could not get through budgetary presentations to executive and legislature. The judge will be bound by the case before him and will be unable to take into account the effect of his order on other state services. Nor may he consider taxpayer resistance and constitutional and market limitations on borrowing, which may all affect the balance of expenditures for a variety of state services as a result of his order requiring a rise in expenditure for the service he is considering. The case before him is not necessarily one in which needs are greatest or treatment is worst. He may be considering retarded children, let us say, only because their parents are better organized, or because public-interest law groups in this field are more enterprising or better funded. *

* Of course one can think of advantages the judge may have over administrators, executives, and legislators—he may bring to bear talents they lack, he may call in experts to advise him, he is not bureaucratic, he is free of the

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From rights to rulings

All these considerations—and more—are raised by Donald Horowitz in his skeptical account of judicial intervention in social policy. Horowitz points out that Judge Johnson's decision on mental hospitals was responsible for raising the state's annual expenditure "from $14 million before suit was filed in 1971 to $58 million in 1973 after the decree was rendered." One wonders whether this great increase in expenditure for mental hospitals did not have some relation to the deplorable conditions that Judge Johnson found in prisons in Alabama a few years later. Fourfold increases in expenditures in one major state function must affect others; and if conditions in jails have subsequently improved, owing to further judicial orders—and conceivably they have—one wonders what the effect has been on Alabama's schools and colleges, or on the state's ability to police against crime, or on welfare. The scheduling of judicial intervention responds to lawsuits, which are ordered not in terms of greatest need, but on the basis of a variety of accidental factors.

Judicial intervention has moved from greater rights to smaller rights; from greater wrongs to lesser wrongs; and from rights to policy with no relation to rights. For example, as one justification for his order on prisons Judge Johnson reports: "Alabama prisons do not have a working classification system, an essential ingredient of any properly operated penal system. A functioning classification system enables officials to segregate for treatment and for the protection of other prisoners not able or willing to function in any other social setting."

One would think that a classification system for prisoners is a matter of prison policy regarding the proper function and ends of incarceration, rather than a matter of right. A case might be made that a prisoner who is not properly classified for purposes of treatment has been deprived of his rights, but this would certainly be some distance removed from the pristine notion of rights. In this matter, we move into the area of professional penology and its various philosophies. Particularly in the light of recent analyses, it is conceivable that a prison system might see its major function as one of requiring retribution from the convicted, and imposing punishment rather than rehabilitation based on proper classifica-

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pressure of lobbyists and interest groups, and he can act rapidly. These and other advantages are emphasized by Abram Chayes in his article, "The Role of the Judge in Public Law Litigation," *Harvard Law Review* (May 1976). Without going into detail, I believe the weaknesses Horowitz points to outweigh whatever advantages may flow from these characteristics of the judicial process.

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tion. I am not arguing for this position, but in view of the discouraging experience with rehabilitation and the increasing persuasiveness of the view that prison should keep criminals confined so they cannot hurt other people, I can certainly imagine such a view developing. Would a prisoner's constitutional rights be affected if a prison system adopts such a view of its functions? Historically, there have been some rather outlandish notions—to present minds—of the proper function of a prison, and at various times in the past they have been implemented. The "penitentiary" was so named, for example, because it was to give the prisoner an opportunity to repent through isolation and work. Jeremy Bentham devoted his not inconsiderable talents to developing a bizarre idea for a prison that would be both profitable and reformatory (see Gertrude Himmelfarb's *Victorian Minds*). Reasonable men refused to accept Bentham's scheme and abandoned the "pure" notion of the penitentiary. Fortunately, in our modern age we would not have to wait for reason and experience to operate; a judge would decide that constitutional rights had been violated.

Even if the case can be made that a proper classification system is a constitutional right, I can see no basis on which it could be argued that efficient and economical administration of a prison system is also a constitutional right. Yet Judge Johnson saw no problem in pointing to poor administration in justification of his order: "Since the final order in *James*, news reports have revealed other instances of what at best constitute questionable management practices. A committee of the Alabama legislature investigating prison operations disclosed that financial records reflect the use of prison funds to purchase cases of caviar, evidently consumed in the course of entertaining legislators." Judge Johnson evidently believes that these facts that came to light after his order help to justify it. One wonders how. These administrative irregularities are certainly the concern of the executive or the legislature, but a judge would only be involved if prison officials were properly charged for offenses. Yet all the problems of the Alabama prison system have merged into one in the mind of the judge who involves himself in administration. Beginning with rights, he goes on to correct administration for the purpose of ensuring rights, and finally to correct administration that has no connection with rights at all.

I will undoubtedly be charged with giving too much attention to the actions and thinking of one judge. In defense, I would argue that this particular judge is important, and is a model for other activist judges; that he has written an article defending active

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involvement in administration; and that there are many, many other examples that could be given of how judges move from rights into issues of administration that have a distant relation or no relation at all to rights. For example, Judge Arthur Garrity, after decreeing that the Boston schools should be desegregated, has gone on to decide which schools should be closed and which constructed, which programs should be located in which schools, how school programs should be developed, whom the school committee must consult and with whom it must write contracts for the development of school programs, which teachers may be fired and which retained, and so on. Any other major school case exhibits the same characteristics. Or consider another case: Having decided that large facilities for the retarded violated constitutional rights, in 1972 Judge Orrin G. Judd ordered the population of the Willowbrook Developmental Center to be reduced from 5,000 to 250, and set up a review panel to oversee the order. A distinguished architect, Richard Meier, was commissioned by the state to design a center for 384 patients. This was completed recently and became a landmark building. But by the time it was ready for occupancy, views as to the proper treatment of the retarded had changed. As the *New York Times* reports (May 3, 1977), "In the seven long years since the Bronx Developmental Center entered the planning stage, the theories about caring for the retarded . . . have taken yet another quantum jump forward. . . . The trend in teaching and housing retarded people has moved away from large institutions such as this one and toward smaller ones, and often toward ones that are physically connected to existing residential communities rather than isolated, as the Developmental Center is." Since Judge Judd had died in the meantime, another Federal judge was now to consider whether it was a violation of their rights to move the mentally retarded into the new center. Once again, judges had moved far from the question of rights into questions of proper policy, in this case for the treatment of the mentally retarded.

What is the impact?

The examples could be multiplied, but we still await a full account of the impact of judicial decisions on each of the various realms of social policy in which they have been operative—the subject to which I now turn. The word "impact" can refer to various things. It can refer to the *ends* of the policy or service itself. It can refer to the *procedures* by which policies are carried out. It can

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refer to the *effect on the personnel* carrying out policy—their attitude toward the beneficiaries of the service may change, their morale may be affected, and this may reflect on the effectiveness of their activities in achieving the ends for which the service or policy was established.

Judicial intervention into policy and procedures on the basis of rights is in theory indifferent to ends. If desegregated education, humane treatment in jails, small treatment centers for the retarded, and an appeals process in welfare are all rights, it would in theory be irrelevant whether the establishment of these rights contributed to or detracted from good education, rehabilitating prisoners, improving the abilities of the retarded, or overcoming the dependency of the poor. A right stands on the grounds of justice, indifferent to whether the heavens fall or are more firmly supported after it is implemented.

But this ignores the reality of the context within which rights are claimed and established. Undoubtedly, many rights are demanded simply from the point of view of justice and human dignity and independently of any contribution to or detraction from the end of a given social service or policy. Yet the fact is that we do mix together the simple-justice basis and the presumed-effects basis for establishing rights. Thus it is agreed that desegregated education is a right. But as Horowitz notes, in *Hobson v. Hansen*, Judge Skelly Wright began with a case attacking de facto segregation in Washington schools and eventually arrived at decisions based on assumptions somewhat doubtfully supported by empirical findings, about which kinds of resources and which kinds of expenditures affected outcomes in education. Again, *In re Gault,* concerned with rights of the juvenile in family court, was based in part on assumptions and tentative speculations by social scientists as to what the effect of informal hearing procedures would be on juveniles. In the Boston school case, the establishment of the right to desegregated education has been accompanied with requirements concerning consultations and contracts with various parties, whose effect is supposed to be better education. In the Willowbrook case, improvement is expected to result from smaller treatment facilities—indeed, it is the right to *more effective* treatment as well as to *humane* treatment that seems to be at issue.

But by now we are well acquainted with the difficulty of determining the effect of any given change or intervention on the ends of policies and services. The effects of desegregation or increased expediture on school achievement simply cannot be determined,

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given the present stage of our understanding—certainly not to the extent of helping a court reach a decision. One could argue the same regarding the various proposals for treating prisoners, or providing services for children or the mentally retarded.

The practitioners in these various areas of social policy adopt diverse points of view on the basis of their direct experience and studies, and the dominant perspective in each field shows alarming shifts over relatively brief periods of time. The Bronx Developmental Center story is a good example. In only seven years, a center designed to be the best in the country, built in one of the most enlightened and generous states in the nation, was consigned to the lower depths, at least in the eyes of court-appointed experts, and regarded as unworthy of even housing its presumed beneficiaries.

Determining the impact of any intervention—even the most massive—on the ends of social policy is an extremely difficult undertaking, and very likely impossible in the time needed to be a proper guide for a court. This is because too many other things are going on at the same time, because the intervention has different meanings in different settings, because administrators will adapt to it in a variety of unforeseen ways. Thus, as Horowitz notes, the requirement that teacher expenditures be equalized per student in the Washington, D.C., schools was translated by administrators into a policy that achieved equalization by moving around only the most easily moveable teachers, those dealing with special subjects. Or to take another example cited by Horowitz, "A court decision may eliminate one obstacle to eligibility for welfare, only to cause welfare officials to tighten their enforcement of other eligibility requirements, thereby reducing the total number of beneficiaries."

Responsibility and discretion

It is for these reasons that supporters of greater activism by courts —and by other government agencies—to achieve certain ends can argue that "nothing yet has changed," and therefore that even greater activism is required. But this is to look only at one aspect of impact—ends, which are the most difficult to determine, and the most difficult to attribute to any specific cause. It is easier to trace out other kinds of impact, on procedure and personnel, from which we may draw some implications regarding the ends of social policy. When one studies the cases, keeps in mind the organizational characteristics of agencies, recalls the role of different professions in

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social policy, considers how changes in social policy have occurred over time and the way those changes have come about, certain hypotheses concerning the larger impact of the judiciary's administrative decision-making on social policy do appear reasonable. I suggest five:

1. The first effect of strengthening the rights of the welfare recipient, prisoner, mental patient, student, and other receivers or presumed beneficiaries of social services must be to reduce the powers of administrators of social services, and the power of those working directly with clients, beneficiaries, patients, etc. The orders of a court are directed to those ultimately responsible, and they must carry out the court's orders by means of regulations limiting discretion at lower levels. The purpose, of course, is to reduce the abuse of rights. But this end is implemented by restricting the power of administrators in general, and in particular, of service providers working directly with subjects. This reflects, of course, the suspicion about administrators and officials dealing with minorities and the poor that was widespread in liberal and academic circles at the beginning of the 1960's. (I do not exclude myself from this suspicion, which was expressed in a number of articles.) It was believed that increasing the power of the subject—welfare recipient, student, prisoner, mental patient—would in various ways enhance the chances of attaining the goals of the policy. (For a general characterization of the situation, see Daniel P. Moynihan's *Maximum Feasible Misunderstanding*. But the literature is voluminous.) This point of view is now no longer so popular—not because suspicion about the effectiveness of administrators and working officials has decreased, but because the effects hoped for from an increase in the power of subjects have not been forthcoming.

Nevertheless, the courts are still engaged in expanding rights and reducing powers. With what effect? One has to note that reducing the power of administrators also reduces their responsibility. If the court has determined what is good practice in schools, mental hospitals, jails, welfare offices, the discretion of administrators has been reduced by the same token. If their discretion is limited, their responsibility is limited. If it is assumed that the person closest to the subject knows best what should be done—the teacher or principal, the warden or guard, the hospital administrator or therapist, the welfare worker—his ability to act on the basis of that knowledge is reduced. A television series shows a detective who knows his neighborhood and knows its petty punks: Although he must operate under the *Miranda* rules, he does so only formally, and then pro-

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ceeds to harass the criminals to achieve what he cannot achieve otherwise because of the new rules restricting the use of evidence. Interestingly enough, this is just what Horowitz finds has actually happened as a result of the *Mapp* decision, which limits the evidence that can be introduced into state courts.

But the moral can be extended. Perhaps the detective simply cynically gives up. Operating under the rules imposed by higher authority because of court decision, he decides to let *them* control crime. Similarly the teacher, faced with new strict procedures and requirements, may either get around them or give up. And likewise the warden, or the hospital attendant. I am not arguing this will happen. Many other factors will be operating. If there is a great infusion of new personnel, as a result of court orders to achieve certain staffing levels, the morale of administrators and workers may be lifted, and they may go about their work with greater enthusiasm and more positive effect. (Or the infusion of new workers may threaten the old guard, or offend them, and lead them to reduce their efforts.) As I have said, effects are indeed various, and we simply cannot make a judgment at this point. What we can do is point to some lines of unarguable influence that will play a role in the total effect. And one undoubted influence of an increase in rights is a reduction of power and discretion of working administrators, and a simultaneous shifting of power and discretion from below to further up the chain of command. On the whole, organizational theorists believe that this will not enhance the effectiveness of an organization.

Rights, procedures, and knowledge

2. The emphasis on rights is also an emphasis on procedures. Procedures are intended to make the administrator and the service provider more equal to the subject. This inevitably reduces the *authority* of the administrator and service provider by undermining the presumption that those in charge know best. In effect, when new procedures to protect rights are instituted, one is saying that those who provide services and control subjects may be wrong. What is the impact of increasing the perception of students and parents that teachers and principals may be wrong, of the mentally deficient—or their guardians—that those providing custodial care and therapy may be wrong, of welfare recipients that social workers and the rules-makers may be wrong?

Here we put aside the question of how often they may indeed

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be wrong. The parent is often in the difficult position of deciding whether to undermine the authority of a teacher by agreeing with his child that a teacher is wrong in a specific case, or to support the teacher's authority in general. Why do we feel that maintaining the authority of the service-provider is of value from the point of view of the ends of the service? Because we have a general sense that authority, if accepted and believed in, is useful in achieving such ends. It has been argued, for example, that if the teacher believes the student can achieve, the student will learn better. (See *Pygmalion in the Classroom,* by Robert Rosenthal and Lenore Jacobson.) The reverse can be argued, too: If the student believes the teacher can achieve, the teacher will perform better. The effect of procedural requirements based on suspicion about the service provider is undoubtedly to spread the conviction among the recipients that the service provider cannot achieve well and should be kept within strict bounds, with the expected results on his effectiveness.

3. Judicial intervention into administration proceeds on the basis of litigation and trial proceedings in which the various parties bring forth the best evidence they can. It is a battle of words and arguments, conducted far from the actual site of the service in controversy. Inevitably, such proceedings give great weight to *theoretical knowledge* as against *practical or clinical knowledge.* In a school desegregation case, it is not a teacher or principal who will testify, but experts and administrators from distant universities on both sides of the argument. In cases dealing with mental-care facilities or prisons, there will be the same kind of expert testimony from the best people in the field the attorneys can find or pay for.

But in these fields the leading people are generally quite far removed from practice (if indeed they were ever so engaged). They have generally never taught children, guarded prisoners, cared for the retarded, dealt with welfare patients. Whatever the value of their theoretical knowledge, in the service-providing professions the leading experts and teachers have generally never provided the services themselves. This is a key difference between law and medicine on the one hand and the service-providing professions on the other (as I noted in my article, "The Schools of the Minor Professions," *Minerva,* July 1974).

Now, what is the effect of intervention and control that are so strongly affected by theoreticians rather than practitioners? By professors of education rather than teachers and principals? Psychiatrists and penologists rather than guards and wardens? Teachers

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of psychiatry rather than working therapists and administrators in mental hospitals? It certainly must be to exaggerate theoretical considerations and reduce practical considerations. This is all the more likely because practical and clinical considerations very often cannot be presented in effective language in a courtroom—that is, after all, the meaning of clinical knowledge, that it cannot be fully explicated or enshrined in a textbook or in well-constructed testimony, and must be learned and taught by example, by nuance. Again, the effect is to reduce the responsibility and authority of the worker at the face of social policy, but also to reduce the weight of the insight and experience he can provide in the formulation of policy.

4. It is theoretical knowledge, brought to the judge in testimony, that is most effective in helping him frame his decision. This knowledge is presented by social scientists. Sociologists, psychologists, economists, and political scientists play important roles in assisting lawyers—who, in these situations, also have what we may properly call only "theoretical" knowledge of the cases they contest, since the living, breathing plaintiff often plays a small and negligible role in such cases. (In fact, he often does not even appear in court.) And all together assist the judge in making his decision. But this knowledge is *tentative*. It is far from the relative certainty of the knowledge in the physical and biological sciences. It often consists of guesses—educated, perhaps, but guesses nonetheless. It is subject to rapid change. Thus, as Horowitz notes, the belief of the Supreme Court majority that the juvenile before a family court had been unfairly treated because of its informal procedures—based on a tentative suggestion by social scientists—was later shown to be unfounded.

It is thereby possible for social policy to be turned in a different direction on the basis of presumed scientific knowledge that is tentative and may be wrong. Of course, the administrator, professional or political, may be just as influenced as the judge by the partial and tentative knowledge of the theoretical scientist. But leaving aside the question of who has a better right to act on such knowledge, the administrator can always reverse himself (or the next administrator can reverse his predecessor) without requiring a new court case or the recourse of old plaintiffs and defendants to further legal action, and the administrator may be better able to temper his enthusiasm for the current suggestions of theoretical knowledge with practical experience.

5. Finally, the emphasis on rights and procedures strengthens

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some elements in the provision of service among others. To begin with, it enhances the role of lawyers, on all sides. The advice of lawyers becomes more important for practicing administrators, and they must take it into account in spite of whatever judgment their own experience suggests. It enhances the role of the more theoretical professions in the provision of service. The judge will require the school system to call upon education consultants—psychologists and sociologists—to assist it in reordering schools and services. Psychiatrists will play a more important role in mental hospitals than working administrators, penologists a more important role than wardens. Once again, if one has faith that these professions carry the answer to the problems of these services, one will applaud such a shift of power. If one is more skeptical, one will not applaud the shift in power, and not expect any great change in results.

A help or a hindrance?

It seems reasonable to conclude that the overall effect of judicial intervention in social-policy administration is to reduce the responsibility and range of discretion of administrators and service workers; to reduce their authority; to give greater weight to theoretical than to practical or clinical considerations; to give greater weight to the speculations, considerations, and research of social scientists in formulating policy; and to increase the power of the legal profession and the more theoretical professions in each branch of social service over that of professionals who deal directly with the clients of the service.

Undoubtedly other analysts would come to other conclusions as to the general impact of judicial intervention on social policy. We need more analysis and study of this new development. But if the five hypotheses I have suggested are borne out by investigation, one may well wonder whether social policy has been improved by judicial intervention.

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Moral education in the schools

WILLIAM J. BENNETT & EDWIN J. DELATTRE

THE belief that moral values should be taught to young Americans in the schools is at least as old as the nation itself. Thomas Jefferson's *Bill for the More General Diffusion of Knowledge* argued for an educational system that would fortify citizens with moral probity to resist the schemes of the enemies of liberty. In his *Proposals Relating to the Education of Youth in Pennsylvania,* Benjamin Franklin prescribed the study of ethics in an instructional program that would seek to instill "benignity of mind." Perhaps the most explicit embodiment of this drive to inculcate the young with moral lessons is to be found in *McGuffey's Readers.* On another level, John Dewey's forceful and highly influential writings concerning the interdependence of democracy, education, and moral character are a modern reformulation of the old belief that "virtue" can and should be taught in the schools. To be sure, an opposite belief—that the schools should teach *no* values, but should stick to imparting skills and basic knowledge—also has its adherents among educators and social theorists. But more and more in recent years, and especially now, in the aftermath of Watergate and accounts of corruption in government and business, there has been a call for reemphasizing moral education in the schools.

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At the moment the entire discussion is dominated by two figures: Sidney Simon, of the School of Education at the University of Massachusetts, who advocates "values clarification," and Lawrence Kohlberg, of Harvard and the Center for Moral Education, who calls for "cognitive moral development." Although they differ in important ways, and although their respective followings are in different segments of the educational community, Simon and Kohlberg share an enormous popularity. Both are widely sought after for "workshops" in their methods, and their programs have gained broad support among the nation's teachers and are increasingly used in the classroom.

Simon and Kohlberg agree in rejecting what they regard as the fundamental error of traditional approaches to moral education in this country—what they call "indoctrination." In their shared opinion, moral education has amounted in the past to little more than an attempt by elders to "impose" values upon the young. They claim to offer something different, and better. In fact, what they offer is different, but certainly no better.

"Values clarification"

Sidney Simon's approach is the most widely used new method of moral education in elementary and secondary schools (though less well known in college circles). The theory behind it begins by criticizing traditional moral "indoctrination" as useless for making sense out of life: Traditional moral education is irrelevant today because the modern world is uniquely difficult and complex, and young people are confused as never before. "The children of today," Simon writes, "are confronted by many more choices than in previous generations":

> Areas of confusion and conflict abound: politics, religion, love and sex, family, friends, drugs, materialism, race, work, aging and death, leisure time, school, and health. Each area demands decisions that yesterday's children were rarely called upon to make.

Even more troubling than the ineffectiveness of "indoctrination" is the traditional principle that there are right and wrong ways of acting, right and wrong ways of thinking. In fact, Simon asserts, "none of us has the 'right' set of values to pass on to other people's children." Thus there is a need for a new approach—values clarification.

Values clarification is concerned not with "the *content* of peo-

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ple's values, but with the *process of valuing.*" Its aims are to promote growth, freedom, and ethical maturity and to enable children to know "how to negotiate the lovely banquet of life ahead of them." These stated aims will be furthered if teachers, parents, and other adults commit themselves to the view that "there's no right or wrong answer" to any question of value. The process of values clarification is taught in classroom "simulations" in which students are offered various choices and taken through exercises (called "strategies") designed to encourage them to make a conscious effort to discover their "own" values. Simon describes the value of this process in these words:

> Each of you who is a parent could leave your own children no legacy more precious than for them to have years of experience in knowing what they want, having learned to set their priorities and rank order the marvelous items in life's cafeteria.

Much of Simon's writing consists of specific "strategies" designed for use in the school and home. In a typical exercise a student might be asked to answer the following:

1. Which do you think is the most religious thing to do on a Sunday morning?
   a. Go to church to hear a very good preacher
   b. Listen to some classical music on the radio
   c. Have a big breakfast with the family
2. Which do you like least?
   a. An uptight indoctrinator
   b. A cynical debunker
   c. A dull, boring fact giver
3. During a campus protest where would you be most likely to be found?
   a. In the midst of it
   b. Gaping at it from across the street
   c. In the library minding your own business

In making these and other similar choices, the student supposedly moves toward fulfillment of the Socratic ideal of self-knowledge. By answering and *knowing* his answer, according to Simon, he gains insight into himself, which in time brings clarity about his values. The student is then prepared to move freely and confidently in the world.

Other values-clarification exercises are more extensive. One "strategy" is called *Who are all those others? And what are they doing in my life?* A diagram dominates one page of the text: "ME" is at the center, with lines extending to blocks representing other peo-

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ple, e.g., "important teacher, a parent-guardian, best friend." The student is asked:

> Essentially, what do they count on you for? What demands do they place on you? What do they want you to be, to do, to think? What do they want you to value? . . . Consider the similarities and differences between what the various people in your life want from you. . . .

In another "strategy," called *Who Comes to My House,* the student is to consider "an inventory of the symbolic warehouse of your life." He is told to ask, "How many people are invited to your house only because you feel obligated to them?" Simon comments on this "strategy":

> When you come to think of it, there is something silly, certainly something nonessential, about paying off obligations, about spending too much precious leisure time with people who are millstones. . . .
>
> There are, of course, "Responsibility People," those toward whom we have an important personal obligation; perhaps an elderly relative or infirm "other." These are responsibilities that, for the most part, we bear graciously, keeping in mind the inevitability of the aging process. To be kind and to help those who need us demonstrates a personal value we respect.
>
> On the other hand, we can choose to spend our time with those who give as they take, who offer at least as much as they receive.

In *Priorities,* Simon "asks you and your family at the dinner table, or your friends across the lunch table, to rank choices and to defend those choices in friendly discussion." One example of Simon's "delightful possibilities" for mealtime discussion is this:

> Your husband or wife is a very attractive person. Your best friend is very attracted to him or her. How would you want them to behave?
> a. Maintain a clandestine relationship so you wouldn't know about it
> b. Be honest and accept the reality of the relationship
> c. Proceed with a divorce

Values-clarification strategies, says Simon, enable the student to achieve knowledge about values, free from the inhibitory inculcation of adults. Despite an admitted shortage of empirical evidence, Simon claims positive results: "Students have become less apathetic, less flighty, less conforming as well as less overdissenting."[1]

[1] In defense of his methods against what he regards as powerful dogmatic and political traditions of indoctrination, Simon sometimes disparages his opponents in authoritarian terms, thus avoiding the need to consider the merits or shortcomings of their arguments. For example, when the school district in Great Neck, New York, cut from its budget funds for training teachers in values clarification, Simon was quoted as saying, "An orthodox Jewish, right-wing group got hold of it and just raised hell."

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"Simulations" or indoctrination?

Values-clarification "strategies" are supposed to give students the greatest possible freedom of choice and knowledge of themselves and the world. By accepting the idea that there are no right or wrong answers to questions of morality and conduct, students learn that being clear about what one wants is all that is required to live well. But do such "strategies" really provide knowledge about the world and freedom of choice? Do they actually make for self-knowledge and ethical maturity and autonomy? Or do they encourage something else? Simon's examples are instructive—in more ways than one.

The first exercise, about the most religious thing to do on a Sunday morning, asks the student to think about what he wants and likes to do on Sunday mornings. Yet it introduces no other considerations, and implies that whatever the student thinks is religious thereby is religious.

The second exercise asks the student to say which of three unattractive choices he likes least—an uptight indoctrinator, a cynical debunker, or a dull, boring fact-giver. Here again, the student is asked to consider only what he likes and dislikes. Moreover, it is assumed that these three are all meaningful choices to the students. No other possibilities or greater descriptions of these people are offered for consideration before a choice is made. The suggestion is clearly that factual information is necessarily boring, debunking necessarily cynical, indoctrination necessarily uptight.

In the exercise on campus protest, the student again answers on the basis of his immediate likes and dislikes, without any knowledge of the circumstances and other germane information about the protest. In this "strategy," it is not relevant whether the protest is a violent, illegal take-over of a university building, or a peaceful, legal demonstration against such an action.

The first of the longer exercises, *Who are all those others? And what are they doing in my life?* centers on the student and instructs him to consider other people only in terms of his and their wants and demands. Any larger aspects of their relationship to him—what they really are doing in his life—are not included in this "strategy."

In *Who Comes to My House,* the student is asked to think of people who are invited to his home only because he "feels obligated to them." The student is then told that "paying off obligations" is "silly" and "non-essential." He is also told that while he may graciously bear responsibilities toward elderly relatives, he can

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choose instead to spend time with people "who offer at least as much as they receive." The student's "precious leisure time" and what he wants to do with it are, again, the main considerations in the exercise. Elderly and infirm people are presented, *a priori,* as "millstones," and the exercise assumes that the student will not want to spend time with them. Further, in the options offered, the student is treated as if his wants always conflicted with his obligations. Note that it is never assumed that the student wants to be decent.

The last exercise asks the student how he would want his spouse and best friend to behave if they were attracted to each other. Typically, the spouse and best friend are presented as having desires they will eventually satisfy anyway: The student is offered only choices that presuppose their relationship. All possibilities for self-restraint, fidelity, regard for others, or respect for mutual relationships and commitments are ignored.

All these examples attest to the failure of Simon's approach to live up to his claims. They involve not "values" but only desires and self-gratification; they do little more than glorify a doctrine of the primacy of wants—the wants, likes, and dislikes of the student and of others. The "strategies" thus offer severely limited and misleading options for conduct. Moreover, the exercises are indifferent throughout to relevant facts—except those that Simon *wants* the student to consider. Absent in all the examples are many considerations—circumstances, context, history—to which moral judgment must be attentive. As a result, these exercises seem more likely to promote hasty, ill-informed, ignorant, and precipitous judgment than any kind of informed free choice. The student is hardly free to make creative choices, since he is closed in by the narrow options Simon gives him. Since the student is taught that clarity about one's desires is the only thing that matters, the importance of knowledgeable, informed, and conscientious judgment in life is entirely obscured.

The "strategies" thus reveal the moral content of Simon's approach. People are bundles of wants; the world is a battlefield of conflicting wants; and no one has room for goodness, decency, or the capacity for a positive exercise of will. Moral maturity is certainly not to be found in the clarification of values, which is cast solely in the language of narrow self-gratification and is devoid of any considerations of decency whatsoever. Finally and ironically, Simon's approach emphatically indoctrinates—by encouraging and even exhorting the student to narcissistic self-gratification.

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"Cognitive moral development"

Kohlberg's work is also gaining in influence and popularity; but although its impact and following in the schools is increasing, Kohlberg's highest standing is among his colleagues in the university community--particularly in departments of psychology and philosophy, and in schools of education. Kohlberg regards values clarification as useful to some degree, but ultimately of limited value: Besides leaving unsolved problems, "a firm restriction to values clarification merges into an actual teaching that ethical relativity is true." Kohlberg believes that relativism is philosophically and scientifically false, and claims to offer instead a version of a long-standing account of objective moral truth: a "reassertion of the Platonic faith in the power of the rational good."

Kohlberg's position emerges from a much more extensive and complicated theoretical background than Simon's. Relying on a series of cultural and anthropological studies, Kohlberg contends that there is a universal and invariant series of six stages of cognitive moral development; that reaching any stage requires passing through the preceding sequence; and that each successive stage is morally superior to those preceding it. Although human beings may stop at any stage in the invariant sequence, they can be stimulated to ascend the scale.

Kohlberg agrees with Simon that moral education has, up to this time, been dominated by "indoctrination." He says that "traditional moral education . . . [is] undemocratic and unconstitutional." Kohlberg stresses the need for a new psychology and a new philosophy that recognizes "the child's right to freedom from indoctrination." Adults are to view the child not as a pupil but as a "moral philosopher" in his own right. Claiming to follow a tradition running from Socrates through Dewey and Piaget, Kohlberg argues that the sole justifiable end of moral education is cognitive moral development and that only exercises involving moral dilemmas and conflicts can promote such development. This strategy, Kohlberg says, reflects a "progressive ideology" with a "liberal, democratic, and non-indoctrinative" notion of education. Kohlberg sometimes even stresses the "revolutionary nature" of his program.

Kohlberg's six stages of cognitive moral development, in order of temporal sequence and moral value, are as follows. Stage One is "*The punishment and obedience orientation,*" in which the child defers to the superior position or power of the parent, teacher, or authority figure: "The physical consequences of action determine its goodness or badness regardless of the human meaning or value

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of these consequences." Stage Two is *"The instrumental relativist orientation,"* in which right action consists of instrumentally satisfying one's own needs and occasionally the needs of others. Stage Three is *"The inter-personal concordance or 'good boy-nice girl' orientation,"* in which the child seeks the approval of others and conforms to stereotypes concerning good behavior and the value of helping others. Stage Four, where Kohlberg claims most citizens peak and most civilized societies dwell, is *"The law and order orientation,"* involving obedience to authority, fixed rules, and the maintenance of the social order. Stage Five is *"The social contract-legalistic orientation,"* which recognizes the importance of an arbitrary element of, or starting point for, rules or expectations, for the utilitarian purpose of agreement. Stage Six is *"The universal ethical principle orientation,"* the apex of morality:

> Right is defined by the decision of conscience in accord with self-chosen *ethical principles* appealing to logical comprehensiveness, universality, and consistency. . . . At heart, these are universal principles of *justice*, of the *reciprocity* and *equality* of human *rights*, and of respect for the dignity of human beings as *individual persons* [italics in the original].

According to Kohlberg, "There is only one principled basis for resolving claims: justice or equality. Treat every man's claim impartially regardless of the man." With an approving nod toward John Rawls, whose philosophical position also fundamentally emphasizes equality, Kohlberg describes Stage Six in the following terms:

> To summarize, I have found a no more recent summary statement of the implications of our studies than that made by Socrates:
>
> First, virtue is ultimately one, not many, and it is always the same ideal form regardless of climate or culture.
>
> Second, the name of this ideal form is justice.
>
> Third, not only is the good one, but virtue is knowledge of the good. He who knows the good chooses the good.
>
> Fourth, the kind of knowledge of the good which is virtue is philosophical knowledge or intuition of the ideal form of the good, not correct opinion or acceptance of conventional beliefs.
>
> Most psychologists have never believed any of these ideas of Socrates. Is it so surprising that psychologists have never understood Socrates? It is hard to understand if you are not Stage Six.

In Kohlberg's view, "the basic referent of the term 'moral' is a type of *judgment* or a type of *decision-making process*, not a type of behavior, emotion, or social institution"; "Morality is a unique *sui generis* realm." His account of morality includes a disclaimer:

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> We make no direct claims about the ultimate aims of men, about the good life. . . . These are problems beyond the scope of the sphere of morality or moral principles, which we define as principles of choice for resolving conflicts of obligation.

Moral education must therefore be non-indoctrinating, democratic, and directed toward justice and equality.

The effective teacher who employs the materials provided by Kohlberg and his followers is "something of a revolutionary, rather than an instiller of virtues." He is expected to be neutral, not imposing his own or other values on the students, but providing a stimulus for students to move through the stages of moral development on their own. Kohlberg says, with another authority (Israel Sheffler), that "to teach . . . is . . . to submit oneself to the understanding and independent judgment of the pupil, to his demand for reasons, to his sense of what constitutes an adequate explanation." The presentation of dilemmas creates internal cognitive conflict, inspiring the student "to see things previously invisible to him"; thus "the whole idea is to encourage students . . . to argue with each other." Students vote on dilemmas in class, to insure that there is sufficient disagreement to create conflict, but they must close their eyes so that none will be influenced by the others.

Examples of simple dilemmas are provided which, along with a standard scoring manual, set forth a series of "criterion judgments" that enable teachers to see where students are on the moral-development continuum. The teacher's responsibility is to use the dilemmas to show the child the insufficiency of his present stage of reasoning in comparison with the reasoning of the next stage. The teacher scores the child by matching student responses with the responses given in the manual for the different stages, by keeping track of the number of Stage One responses, Stage Two responses, and so on, and by noting progress from one level to the next. The teacher is instructed to establish a "non-judgmental atmosphere," and not to be "the enforcer of demands"; the teacher is advised "to relax and enjoy it," even to "swing with it."

Dealing with dilemmas

An example of a dilemma is presented in *Affiliative Roles and Relationships*. A mother promises her 12-year-old daughter, Judy, that she may go to a rock concert if she saves enough money. Judy saves $5 for the ticket and $3 more. But her mother then changes

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her mind and tells Judy she must spend the money for new school clothes. Judy goes to the rock concert anyway, after telling her mother that she saved only $3 and went to her friend's house for the day. Later, Judy confesses her lie to her older sister, Louise. In the *Standard Scoring Manual,* the main question about this dilemma is, "Should a daughter [Louise] help her mother exercise authority even if doing so means that her sister's contract or property rights will be violated?" Then for the teacher's use, subsidiary questions are offered:

1. In wondering whether to tell, Louise thinks of the fact that Judy is her sister. Should that make a difference in Louise's decision?
2. What do you think is the most important thing for a good daughter to be concerned about in her relationship to her mother in this or other situations?

At Stage One, or more precisely at Stage One-A, the "bottom level," the student responds that Louise should tell because "Louise *or* Judy will be punished when their mother finds out." A Stage One-B answer is that "Louise should tell *or* a daughter should obey her mother; since the mother is older, she knows more, is smarter, knows what's best, etc." An "Optimal Example" answer of reasoning at the bottom level comes in response to questions about what is most important in the relationship between mother and daughter. The dialogue supposedly goes like this: "[Student:] "Be honest. [Teacher:] Why? [Student:] Because it is her mother and she should keep promises to her because she is older. [Teacher:] Why? [Student:] She knows more and knows what's best."

From this "low" point the student should progress upward to Stage Two (Louise tells because of concern that Judy "might try to get away with lying or deceiving her mother all the time"); to Stage Three ("A good daughter should recognize that her mother loves her and has her best interests at heart"); to Stage Four ("Louise should tell her mother about Judy's lying out of respect for her mother's authority and in recognition of the fact that the mother is responsible for making decisions concerning her daughter's conduct and welfare.") This particular dilemma only goes as far as Stage Five, where the manual presents a fairly elaborate articulation of "Role Norm Obligations" and "Fairness and Equity." The answer at this level is, "The mother had no right to forbid Judy to go to the concert because Judy is an individual with rights equal to her mother's." At this stage, the answer to the second subsidiary question is this:

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> The most important thing the mother should recognize in the mother-daughter relationship is that her daughter is a free and unique individual who should be treated as such.

The manual describes this peak of moral reasoning:

> This judgment focuses on the obligation to respect each person's individuality or right to autonomy without imposition upon that person of one's own expectations. . . .

The "Optimal Example" is characterized as follows:

> A good mother should early respect her daughter as a person, as an individual with needs, and rights and emotions. If possible she should always deal directly and straightforwardly with her daughter; not condescendingly or authoritarianly.
>
> The mother had no right to forbid Judy to go to the concert because Judy is an individual with rights equal to her mother's. [Students] may say that Judy's youth or ostensibly subordinate role as daughter should not be regarded as a morally relevant consideration. . . . The mother's authority is legitimate only insofar as it is based on mutual respect, is just, and could be freely accepted by all parties with informed consent.

And other examples of Stage-Five sophistication are offered:

> What is a daughter but a person, and should be treated as such. Double standards should not exist for a subperson-children, over whom you have "power" and others over whom you don't. . . . A mother may guide or suggest the most advantageous use of property, but must not impose herself on her children, and accept their decisions and properties, as she must for other people as well, and may not use the excuse that they are too young to manage such things, to rule two lives and consciences. . . . When people are reacted to as people not as threats to one's self, or as an instrument for your power, but as people, is the only way harmony will ever begin to exist in the conscience and the world.

A full book of such dilemmas, *Hypothetical Dilemmas for Use in Moral Discussions*, has been prepared and distributed by the Moral Education and Research Foundation at Harvard. This is a typical dilemma found in the book:

> *Sex as a Need:* The Johnson family (with four children) was a very happy and close one. Mr. and Mrs. Johnson were in their 30's. One day Mr. Johnson fell from a third-story building where he was working. He broke his back in this accident and was totally paralyzed from his waist down. The accident did not result in economic hardship because of workmen's compensation. Three months after the accident, when Mr. Johnson came home, the problem began. Ms. [*sic*] Johnson, who was a young person, realized that she would

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have to give up sexual intercourse with her husband. If she did not want to give up her sex life, she had the following choices: either get a divorce, or to have extramarital affairs.

1. Is it possible to separate sex from affection? What do you think she should do? Give reasons.
2. Do you think this woman should remain married to the husband? Why or why not?
3. What do you think would happen to the family if she had an affair?
4. If she decides to have an affair, should she tell her husband or keep it a secret? Why?

The remaining 50 dilemmas deal with similar crises. Twenty-one are related to sexual conflicts—homosexuality, swapping, extramarital sex. There are simple one- or two-page statements about the dilemmas of My Lai, Daniel Berrigan, Daniel Ellsberg, women's liberation, kidney transplants, Mayor Daley, draft evasion, abortion, and choosing one child over another.

A curious libertarianism

Kohlberg purports to have advanced far beyond the relativism and glorified idiosyncrasy of the Simon approach.[2] He claims to be returning to a rich philosophical tradition—that of Socrates, Plato, and Dewey—which has justifiably long been regarded as powerful and insightful. Moral education, in Kohlberg's account, does have an intellectual core: The exchange of ideas between teacher and student suggests a process that is an improvement over Simon's method. Kohlberg's belief that students can become more rational through education does indeed reaffirm, in principle, the faith of this tradition.

Kohlberg says his approach is designed to lead students through stages of moral development to greater and greater objectivity in their moral judgments. The ideal perspective, Stage Six, involves viewing the claims of others with "justice," that is, treating "every man's claim impartially regardless of the man." As the examples amply demonstrate, in Kohlberg's view, moral claims are to be decided by considering individual "rights." Presumably, the student progresses to an ever more impartial evaluation of respective claims to "rights." There is thus a distinct libertarian emphasis in

[2] This difference of opinion should not be exaggerated, however. In the Great Neck controversy, Kohlberg testified on behalf of Simon. Kohlberg commented that the "protestors" insisted that values should not be dealt with in the school, but should be left for the church and home.

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Kohlberg, revealing his dislike of what he regards as the imposition of authority—by parents, rules, or traditional forms of indoctrination. Kohlberg's libertarianism is intended to remind the student that the rights of all must be respected equally: Moral judgment to a very large extent involves assessing competing claims of individuals about their rights.

The example of Judy and her mother, for example, is discussed in the language of the rights of each—Judy's right to go to the concert with "her" money (her contract and property rights) and her mother's alleged right to exercise authority. (The mother's "right" to have her daughter tell her the truth is never mentioned.) But in the progress up Kohlberg's scale, as the child supposedly gains in moral perspicuity, the mother's rights and her claims to rights get dimmer and dimmer, while Judy's rights seem to grow and to dominate the discussion. In the "enlightened" Stage Five, the mother has no right to forbid Judy to go to the concert, because Judy has "equal" rights. In fact, however, the mother's rights at this level have almost evaporated; Judy's "equal rights" appear to be more than equal to her mother's. The mother's rights are subordinated to her obligations, specifically the obligation to respect her daughter's rights. It is as if Judy is assumed to be disadvantaged; Kohlberg takes Judy, as a daughter, to be a victim of parental authority. In the progress upward through the stages, Judy increasingly gains support for her claims. The "optimal answers" stress that "a good mother should early respect her daughter as a person" and that "the mother had no right to forbid Judy." Reciprocity—real equality of claims to rights—seems to be absent.

According to Kohlberg's *theory,* students should impartially consider the rights of all the people involved in the example about the Johnson family. But in the narrative and the questions, the emphasis is entirely on Ms. Johnson's rights, desires, and rights to her desires. The student is invited to consider and focus on her choices, divorce or extramarital affairs, and whether she has the right to these things. Mr. Johnson's and the children's choices and rights are not discussed. With all the theoretical emphasis on the importance and value of impartiality, this example clearly seems sympathetic toward the "predicament" of Ms. Johnson and uncaring toward that of Mr. Johnson and the children. It is as if Mr. Johnson and the children lost their rights, including their right to consideration, when Mr. Johnson fell from the building. Again, paradoxically, only one person in a complex relationship seems to be entitled to "equal consideration in the matter": Ms. Johnson

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is taken to be *the* disadvantaged individual. The example ignores justice, reciprocity, and the equality and equal rights of all the persons involved.

The "hidden curriculum"

An additional and increasingly dominant thread in Kohlberg's thinking is that treating the child as a "moral philosopher" and stimulating moral development require a commitment by educators to create a "just community" in the school, because of what Kohlberg calls the "hidden curriculum" in most schools. This "hidden curriculum" embodies the values of the teachers and administrators, which are never made explicit to students but are ultimately used to evaluate them, and which express "the moral atmosphere of the school." The function of the "hidden curriculum," according to Kohlberg, is "moral education or perhaps miseducation." He gives an example of some of its dangers:

> To make the point I took a trivial episode. My son, then in the second grade, came home from school one day saying, "I don't want to be one of the bad boys at school." I asked, "Who are they," and he answered, "They are the boys who don't put their books away, and they get yelled at" . . . [The] guts of the hidden curriculum are the praise, the teacher's use of rewards or punishment; the crowd, or the life in a crowded group; and the teacher's power.

Kohlberg believes that his vision of moral education will do away with the "hidden curriculum." He concludes that the moral development of students depends upon a sense of working together for a just society in schools, "based on concepts of justice and participatory democracy."

Kohlberg offers an example of a real-life dilemma arising in an actual "just school": the experience of one of his disciples, Elsa Wasserman, at the Cluster School in Cambridge. There, according to Wasserman's description, "black and white students argue about a decision to correct racial injustice as they see it in their school community"; this suggests the benefits of a "just community" to Kohlberg—"that a school based on concepts of justice and participatory democracy can be a community which operates close to the level of its highest members and continues to progress upward." Wasserman offers the following example to show the "viable democracy," "moral growth," and "consideration for fairness" found at the school:

> This year a difficult issue of fairness focused on the admission of students for six remaining openings in the school. There were 47

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white students in the school and 18 black students. The black students wanted more equal representation in the community. But there were already six students on the waiting list, only one of whom was black. The democracy class proposed that all six openings be filled by blacks.

Here is the student dialogue. A white student responded to the proposal:

> Does that mean that there's only one black on it now, but you want to get five more blacks to jump in front of the rest of the waiting line?

A black student replied:

> I'm one of the people that wants some black people to come in. . . . From what I see I feel I would be more comfortable with them here. I want them here. . . .

Another white countered:

> If they were all black people [on the waiting list], it would be fair to let them in. I don't care if there were six black people on the waiting list, they could come in, but these five white people, they were first, right?

Still another white student asked:

> But why can't everybody accept the fact that the blacks would feel more comfortable and get a better education with more blacks in school?

Another black student asked:

> Can I ask all you white people something? I'm not prejudiced, but is it going to make that much difference if there's six more black people instead of white? Is it? There's 47 of you whites now. There's 18 blacks. Six more blacks isn't going to make one difference.

Still another black student concluded:

> Never in my life have I seen as many of you who have outnumbered me and mine, anyway. O.K., then I get to know them. I say, these whites are all right. . . . And then I came back here and I try to get some of my brothers and sisters at this school so they can be helped like I'm being helped. And what do I hear? No. Because they don't want to hear it. Why can't they just give us 18 blacks a little personal satisfaction with ourselves to have some more of us so we can be together? All right. (Applause.)

Following this the community voted. A majority was in favor of the proposal. One student in opposition asked:

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> The reason I voted against the proposal was that I wanted to hear more reasons from the black kids but I'm also feeling a little guilty because I want six black kids to come in, but I don't know what to say about the five white kids on the waiting list. What are we going to tell them?

Wasserman writes that the following justification for the decision was offered:

> All you have to do is explain to them that the community decided that it was the best idea to take all blacks this time for the community's sake and from now on, every June we're going to admit more kids, we'll admit half-black, half-white. By then eventually, it will be fairer and we can accept blacks and whites the same way.

The "viable democracy" then voted "almost unanimously" to adopt the proposal.

The reasoning of the students and the outcome of their vote are celebrated as an example of a community moving upward through stages of moral development to respect for justice. Yet the facts suggest something else. The one student concerned to treat the whites on the waiting list impartially—in Kohlberg's words, "to treat every man's claim impartially regardless of the man"—is never answered. His request for reasons that would show that something is wrong with the color-blind admissions policy and the rules of the school, and his clear willingness to listen to the arguments of other students despite their indifference to his, are answered with *a priori* assertions clearly favoring the other point of view without offering reasons. In fact, the entire discussion is weighted against reasons. "I want them here," says one student; "Blacks would feel more comfortable and get a better education," says another; "Give us blacks a little personal satisfaction," says a third. These responses—fairly characterized in Kohlberg's own terms as primarily the kind of instrumental relativism found in lower Stage Two—are not arguments; they are not reasons; and they clearly treat color and personal desires as overriding other factors, ignoring justice and impartiality and the questions of troubled students.

Kohlberg treats the discourse and the solution as exemplary of moral progress and objectivity, even though the teachers and the majority of the students do not consider claims, questions, or rights objectively. If this "just community" is to be praised, it cannot be in terms of justice and impartiality. At the end, the result is a pronunciamento of a "general will" of the "democracy class"—a tyranny of a particular majority over the students who ask questions (and over their rights), and over those on the waiting list who have

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a reasonable expectation to have themselves and their rights "treated equally." With chilling arrogance, the democracy class informs its opposition, "All you have to do is explain that the community decided that it was the best idea. . . ." This is very far from Kohlberg's libertarian celebration of Stage Six morality, and far from deciding questions on the basis of a "universal, ethical principle orientation."

The dismal science of pedagogy

As these and other examples suggest, practice does not square with theory in Kohlberg's universe. His theory appears to be transformed in practice into a particular ideology giving certain individuals and groups of individuals rights more than equal to those of others. The claims of those in authority and the claims of rules always yield to the claims of the "disadvantaged," or those whom Kohlberg takes to be disadvantaged. In this way, the examples belie the theory of impartial justice, suggesting progress less toward impartial justice—an appreciation of the power of the rational good—than toward sharing his sympathies and dispositions regarding the special claims of those victims of authority.

Whether or not this is a reasonable approach to moral education, it certainly conflicts with Kohlberg's theoretical edifice and its claims of impartiality. In this respect, Kohlberg himself conceals what can fairly be called a "hidden curriculum" of instruction in partial justice. This is not a program for justice as fairness to all parties regardless of the man, or for promoting principled, objective moral development.

In fact, it must be doubted whether what Kohlberg describes is really morality at all. Morality takes place among human beings and not among disembodied bearers of "rights," who are incessantly engaged in squabbling about them. Morality is concerned with doing good, with sacrifice, altruism, love, courage, honor, and compassion, and with fidelity and large-mindedness regarding one's station, commitments, family, friends, colleagues, and society in general. Morality among men is not merely legalistic and formalistic, it does not consist merely of so many non-negotiable demands.

Both Simon and Kohlberg also fail to avoid indoctrination. Both of their programs offer indoctrination in the "values" they take to be important—the celebration of wants and desires, the exhortation to self-gratification, and a particular ideology of rights and "special justice." Although they both claim to disavow traditional moral education because it indoctrinates, Simon and Kohlberg clearly do

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not oppose indoctrination per se, but the indoctrination of traditional values.

Yet Simon and Kohlberg's view of the world—the message they deliver, the values they recommend—is worth a good deal less than much of what they oppose. To them, goodness simply does not exist: People press for their wants or their rights and are continually at each other's throats. Although Simon and Kohlberg dislike authority, each offers a program that would impose on students an authority much more malevolent in its consequences than any traditional form of authority or "indoctrination." The tyranny of the passions and of minorities and majorities—the arbitrary exercise of power by special groups, be they advantaged or disadvantaged—offers not more freedom, but less, and a far less attractive world. Subjected only to one's wants or to the whims of special groups wielding arbitrary power, the individual and his life and moral relations are much bleaker than they actually are, or than they have traditionally been represented to be by the old to the young. In Simon and Kohlberg, responsibility and love are missing; life and man are oppressive; and the world is cold, ugly, brutish, and lonely. In this distorted view of life and morality, they fail to recognize the significance of what is possible among people across generations.

The barren world Simon and Kohlberg offer to students, teachers, and parents allows room for only an endless succession of conflicts and dilemmas. "Values clarification" and "cognitive moral development" neglect and deny precious and important features of morally mature life—friendship, love, fidelity, regard for work, care for home and family—which are, for the most part, not morally problematic. Finally, according to Simon and Kohlberg, there is no place for stories and lessons, no place for the passing on of knowledge and experience. Children are invited to a world where it is a travesty and an imposition for anyone to tell them the truth.

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CURRENT READING

Reading at the White House . . .

According to *Folio* (October 1977), a trade journal for the magazine industry, "The White House Press Office reports that it regularly receives and reviews 37 magazines. Included on the eclectic list are the following":

Atlantic
Broadcasting
Business Week
Columbia Journalism Review
Ebony
Encore
The Economist
First Monday
Human Events
More
Manchester Guardian
Mother Jones
Ms.
The Nation
National Journal
National Review
National Spotlight
The New Republic
New Times
New West
New York
New York Review of Books
The New Yorker
People
Playboy
Progressive
Psychology Today
Rollcall
Rolling Stone
Saturday Review
Science
Sports Illustrated
Texas Monthly
TV Guide
U.S. News and World Report
Washington Monthly
Washingtonian

. . . and in the Universities

The Chronicle of Higher Education surveyed 60 bookstores from a cross section of American universities to discover "What They're Reading on College Campuses" (May 2, 1977). Listed in order of sales volume, the 10 most popular books were as follows:

1. *Children of Dune,* by Frank Herbert
2. *Roots,* by Alex Haley
3. *Life After Life,* by Raymond A. Moody, Jr.
4. *The Hite Report,* by Shere Hite
5. *Passages,* by Gail Sheehy
6. *Kinflicks,* by Lisa Alther

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7. *Final Days,* by Bob Woodward and Carl Bernstein
8. *Your Erroneous Zones,* by Wayne W. Dyer
9. *Even Cowgirls Get the Blues,* by Tom Robbins
10. *Warriors,* by John Jakes

Is There a Housing-Cost Problem?

In "The Affordability of New Homes," which appeared in the *Journal of the American Real Estate and Urban Economics Association* (Summer 1977), John C. Weicher arrived at a different—and more optimistic—conclusion about future housing costs than Bernard Frieden did in his *Public Interest* article, "The New Housing-Cost Problem" (Summer 1977). Unlike most articles on the subject, Weicher's includes data from before 1970, and, for reasons he explains, this results in a markedly different picture of the "housing problem":

> [The table below] demonstrates the main reason for the conclusion that the recent rise in new home prices does not pose a special problem. It compares the trends in prices and family incomes during the postwar period, insofar as data are available. Overall, the changes in the median new home price and the median family income are very similar from year to year. This is indicated most clearly in the column showing the ratio of price to income each year; this ratio is remarkably stable, at 2.8 to 2.9, with few exceptions. The stability of the ratio implies equal percentage changes in both components over time. The year-to-year changes are not shown [in the table] because of gaps in new home price data, but they have been very close over the period. For the entire 26 years, for example, the median price increased by 347 percent, or 5.92 percent per year, while median family income rose by 342 percent, or 5.88 percent per year. Since 1963, there is a similar pattern: a price increase of 118 percent, or 6.72 percent annually, compared to an income increase of 120 percent, or 6.77 percent annually.
>
> There is one period in which the price-income ratio was markedly lower than 2.8—the years 1970 to 1972. As [the table] shows, the decline in the ratio occurred because of a decline in the price of the typical new home in 1970; this is the only year-to-year decline shown in the available data. Home price and income then increased proportionally through 1972. A sharp price increase of 18 percent in 1973 then raised the price-income ratio to its usual level.
>
> The pattern of the early 1970's is easily explained. These were the years of substantial new home production under the Section 235 housing subsidy program. Under Section 235, low-income families received subsidies to enable them to buy either new or existing homes. The program was enacted in 1968, but significant numbers of new homes were not subsidized under it until 1970. At the beginning of 1973, President Nixon suspended the program, but production based on previous commitments continued during 1973, albeit at a reduced level. Production after 1973 was virtually nonexistent. . . .

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Median New Home Sales Prices and Family Income, 1949-1975

Year	Median Family Income	Median Sales Price	Ratio of Sales Price to Income
1949	$ 3,107	$ 8,800	2.8
1950	3,319	NA	NA
1951	3,709	NA	NA
1952	3,890	NA	NA
1953	4,233	NA	NA
1954	4,173	12,300	2.9
1955	4,421	13,700	3.1
1956	4,783	14,300	3.0
1957	4,971	NA	NA
1958	5,087	NA	NA
1959	5,417	15,200	2.8
1960	5,620	NA	NA
1961	5,737	NA	NA
1962	5,956	NA	NA
1963	6,249	18,000	2.9
1964	6,569	18,900	2.9
1965	6,957	20,000	2.9
1966	7,532	21,400	2.8
1967	7,933	22,700	2.9
1968	8,632	24,700	2.9
1969	9,433	25,600	2.7
1970	9,867	23,400	2.4
1971	10,285	25,200	2.5
1972	11,116	27,600	2.5
1973	12,051	32,500	2.7
1974	12,836	35,900	2.8
1975	13,719	39,300	2.9

In evaluating the trends in new home costs over time, it is appropriate to exclude Section 235 and FmHA homes from the data. The exclusion is particularly relevant when the focus of attention is on the ability of the traditional homebuying groups to afford new homes; middle-income families were not eligible for assistance under either program, and there is no evidence that they would have been attracted to the smaller homes subsidized by the two programs.

Parental Discretion

In his acceptance paper, "On Exercising Choice," for the Seidman Distinguished Award in Political Economy, Thomas C. Schelling, Professor of Economics at Harvard, included some speculations on the problems that could result for public policy if (as now seems likely) technology makes it possible for parents to predetermine the sex of their offspring:

> What does the government do, as a matter of policy, if boys and girls are born in very unequal numbers, or even if the ratio fluctuates in cycles, evening out in the long run but leaving large alternating imbalances in successive age groups? At the level of "technical policy," the problem is probably no harder than coping with inflation

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or unemployment, energy, changes in the birth rate or changes in the ratio of elderly retired to the working population. The government could attempt to "stabilize" the birth ratio by a variety of fiscal measures, like differential income tax deductions, differential eligibility of men and women for military service, arrangements for differential college tuition, and a variety of favoritisms and affirmative actions discriminating by sex. It wouldn't be easy to devise successful policies, but it wouldn't be analytically different from so many things that the government presently tries to stabilize.

But the social and even constitutional implications are awesome. Imagine the government's having to have a policy on a "target" sex ratio for births. Imagine that Presidential candidates had to debate whether it's better for men to exceed women by 5 percent or 10 percent or not at all, or for women to exceed men. Besides the need to incorporate a multitude of sexually discriminatory rewards and penalties throughout the government's expenditure and revenue and regulatory programs, there would have to be a "policy" on the "correct" numbers of men and women to have.

There are already people who argue that Federal programs to help the poor with family planning have racial implications, even racial motives. Imagine having explicit demographic targets: a President proposing measures that would hold inflation to 4 percent, unemployment to 5 percent, and excess men to 6 percent.

So it isn't only parents who might like to be spared some of the choices that would have to be made if this particular technology became available. There are some things—the weather may be one and the sex of a child at birth another—that it is a great relief to be unable to control. The lottery dispenses arbitrary justice indiscriminately, but it may beat having to discriminate.

Addicts vs. Users

In a publication of the Drug Abuse Council, "Heroin Abuse: A New Look," Leon Hunt and Norman E. Zinberg report on recent studies that suggest greater use of heroin—although not necessarily greater addiction—than has previously been suspected:

> Two unrelated sets of data give similar estimates of the population of active users. Both suggest that there may be many more users than traditional sources have reported. Even if these estimates are off by a factor of two, so that only two million people used heroin in the past year, the total is still three times that of previous estimates. If there are so many users, why are they not more visible?
>
> One possible reason which is consistent with the in-depth findings from the small qualitative study may be that relatively few of them are addicts. For example, general population surveys report only a few percent of all users to be daily users. Further evidence for this can be found through comparison of morphine positives and quinine positives in urinalysis tests from such general population samples as employment records. Morphine, the main metabolite of heroin, is only

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briefly detectable to chromotographic techniques—depending on dose, for about 24 hours. Quinine, which is used to dilute street heroin in some locales, persists for several days. Thus while a daily user of quinine-cut heroin would always be morphine positive, a weekly user would be positive only one day out of seven, but quinine positive most of the remaining time.

Comparison of morphine to quinine positives (after accounting for the "background" levels of medical and other possible reasons for a person using quinine) yields a result similar to the surveys. In a sample of over 10,000 urinalyses done by the New York Telephone Company, the ratio of morphine positives to total morphine and suspected morphine (indicated by nonmedical quinine) averaged about 10 to 20 percent. Thus we must postulate that only a small fraction of the population of active heroin users take the drug daily.

A Progressive Idea?

Christopher Jencks recently offered a surprising reassessment of a traditional target of reformers—the property tax (*Working Papers*, Summer 1977):

> The local property tax has traditionally been the bane of reformers. According to the traditional view, the property tax is primarily a tax on residential housing. Since the poor appear to spend more of their income on housing than the rich, the property tax looks regressive. Recently, however, economists have come to doubt that the poor spend an appreciably larger fraction of their income on housing than the rich. Furthermore, there is some evidence that valuable housing is taxed at a higher rate relative to its rental value than cheap housing. Finally, most economists now doubt that property owners are really able to pass property taxes along to their tenants. The last point suggests that the property tax is basically a tax on capital. If so, it is highly progressive.

An Enterprising Author

The English periodical *New Society* (October 6, 1977) describes how one Hungarian author managed to "beat the system" of the state-controlled publishing industry:

> Writers complain the world over that it takes far too long for publishers to translate their manuscripts into books, and nowhere are the complaints as loud as they are in Hungary, where the state-run publishing houses can take up to four or five years to bring out a book. Now the popular novelist, Antal Végh, has beaten the system by going private. By taking the risk of publishing privately, he managed to have his latest book published in four months—a record.
>
> The economics of the operation were revealing. The printing works charged him 370,000 forints (there are about 38 forints to the pound at the tourist rate) payable within 30 days, which meant that Végh never actually needed to have this sum at all. He was confident that

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his entire edition of 20,000 copies would be sold out within the given period.

This says something about the popularity of books in Hungary, in spite of the fact that Végh's book is dearer than the average at 42 forints a copy. But he had no subsidy from the state. What he did have, over and above his reputation as a writer, was the existence of the state book distributing enterprise, which happily agreed to handle the book at the customary 33 per cent.

All the parties, Végh argues, did well out of what was basically a capitalist undertaking. He himself made 80,000 forints, taxable in the usual way, which is precisely what he would have made had he been published by a state enterprise. The state itself benefited by not having had to pay him a subvention. The printers did well out of it and so did the book distributors. The customer also benefited because he was given the chance of buying Végh's latest output. (Some of his earlier novels, apparently, are capable of fetching ten times the price of the latest one on the black market).

And have the state-owned publishers learnt anything from Végh's object lesson? The literary entrepreneur entertains grave doubts on that score, and explains that it needs the writer's personal financial responsibility to speed things up. All writers are equal, but those with the cash to cut corners are more equal than others.

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WINTER BOOKS

A Special Supplement

edited by

Marc F. Plattner & Robert Asahina

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Oil's Spoils

RICHARD B. MANCKE

EACH year brings forth a new crop of books aimed at showing how the giant, vertically integrated, multinational oil companies—with the active aid of their many well-placed allies within the American government—have enriched themselves at the expense of the American people and the rest of the world. Robert Engler's *The Brotherhood of Oil* and the late John M. Blair's *The Control of Oil* are the latest examples.* The title of each book accurately reflects its author's preoccupation with the consequences of the monopoly power allegedly enjoyed and exploited by the major integrated oil companies. However, there are important differences between the two in style, substance, and methodology.

Engler's interests are wider-ranging than Blair's. The central theme of *The Brotherhood of Oil* is that "organizing basic natural resources on premises of greed, whether individual, corporate, or national, remains destructive for the environment and for human solidarity." Engler claims to demonstrate this conclusion by applying the methods of political economy to a study of the oil business. But because he condemns the oil companies whether they raise or cut prices, expand or limit output, support or oppose government policies, his methodology has more in common with demonology. Though he repeatedly and passionately asserts that the giant oil companies profit at the expense of "the poor," "the environment," and "the workers," Engler never questions the existence of the necessary precondition for their alleged abuses: the possession of substantial monopoly power.

By contrast, *The Control of Oil* can be viewed as the prosecution's economic justification for issuing a wide-ranging antitrust indictment against the large, integrated oil companies. After a distinguished 32-year career in government—including nearly a decade as the Assistant Chief Economist of the Federal Trade Commission (F.T.C.) and 14 years as the Chief Economist of the Senate Subcommittee on Antitrust and Monopoly before retiring in 1970—John Blair possessed both considerable knowledge and expertise about antitrust and the petroleum industry, and a long record as an opponent of what he perceived to be its monopolistic abuses. Would a knowledgeable and objective jury grant the guilty verdict that Blair feels the large oil companies have earned?

From the start of World War I until the mid-1950's, the infamous Seven Sisters—often with the backing of the American or British governments—dominated the international petroleum business. Relying heavily on the 1952 F.T.C. report (of which he was co-author) on the international petroleum cartel and the 1974-75 hear-

* *The Brotherhood of Oil,* by Robert Engler, University of Chicago Press. 338 pp. $12.50. *The Control of Oil,* by John M. Blair. Pantheon. 441 pp. $15.00.

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ings of the Senate Subcommittee on Multinational Corporations, Blair recounts the oft-told tale of how these seven firms acquired and for several decades maintained their nearly exclusive access to foreign oil supplies and how they devised a great variety of production-sharing and marketing agreements in an effort to stop price competition. Were they successful in their efforts to establish a monopoly? Blair freely concedes that a market dominated by a few firms tied tightly together still might not preclude competition:

> Although attempts to stabilize the price of any commodity can be upset by only a relatively small amount of uncontrolled production, certain characteristics of oil make it particularly vulnerable to market disruption. . . . Large-scale storage is difficult and expensive. As a liquid it must be contained, usually in steel storage tanks; but steel is costly and the tanks must be constantly painted to prevent rust. Hence, it is an industry axiom that oil, once produced, must move. Moreover, oil is a fungible commodity . . . quality differentials that are recognized by both buyers and sellers make it possible for oil from any source to compete directly with oil from any other source. Finally, oil's relatively low short-run elasticity of demand with respect to price means that any excess of total production will not, as a consequence of lower price, be absorbed by a corresponding increase in consumption. On the supply side, independents who have been fortunate enough to obtain a concession have usually been under strong pressure by the host government to constantly increase production. The combination of this pressure with other characteristics has made world oil prices particularly sensitive to any uncontrolled supply.

In order to insure a successful monopoly, the Seven Sisters required additional control. Blair contends that they achieved it by adopting a system under which prices in any given market were identical (with adjustments for quality differentials), regardless of the seller or country of origin. Such a system implies that "the choice of a seller, insofar as a given buyer is concerned, becomes a matter of indifference"; Blair, who pejoratively mislabels this mechanism "basing-point pricing," regards it as proof of a monopoly. Unfortunately, he is wrong to draw that conclusion. In 1972, M.A. Adelman explained the fallacy of this argument (which to my knowledge first appeared in the 1952 F.T.C. report):

> The [F.T.C.] report says often that the oil companies have devised a system whereby prices at any given market are identical "regardless of point of origin." If prices in any given market were not identical, that would really be something to explain. If a given commodity sells at more than one price at one time in one market, this means either that an apparently single market is really two or more markets, or that the market is controlled by a monopoly which can increase profits by separating customers and charging different prices to different classes according to their ability to pay.

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Blair's analysis of basing-point pricing is flawed. Nonetheless, most scholarly studies agree that the seven international oil companies exercised significant monopoly power in world oil markets until the early 1950's. But three fundamental changes have transformed the oil industry since then, making it nearly impossible for private oil companies to continue to exercise monopoly power in world markets. First, beginning in the mid-1950's, several firms (both American and foreign) joined the Seven Sisters in producing foreign oil. Because the most promising Persian Gulf oil concessions were under the nearly exclusive ownership of the Seven Sisters, new competition was initially on a very small scale. This was not the case, however, in Libya. To avoid dependence on any single economic entity, Libya established a fragmented pattern of oil concessions under its 1955 Petroleum Law. Many American companies without significant foreign oil reserves acquired Libyan concessions; by the early 1960's, several of them had discovered and started developing large oil reserves. But world oil prices had begun to fall even before the first shipments of Libyan oil left port. Blair reports that the price actually paid for a barrel of crude oil (as opposed to its nominal posted price) dropped from $1.93 in 1956 to $1.60 in 1959. And the falling prices led directly to the second fundamental change in the world oil industry—the formation of OPEC, the Organization of Petroleum Exporting Countries.

In return for concessions to produce and sell a nation's petroleum, oil companies agreed to pay royalties and taxes that were a fixed percentage (typically totaling about 50 percent) of the posted wellhead price of crude oil. Desiring higher revenues, several of the most important oil-exporting countries repeatedly urged their concessionnaires to expand their oil production. But under the existing royalty and tax formulae, the oil companies bore the entire burden when competition for higher oil sales caused falling prices in the late 1950's. Arguing that the oil-exporting countries should share some of the reduction in per-barrel revenues, the oil companies cut the posted prices of crude oil. Unaccustomed to the onerous consequences of competition, the oil-producing countries were incensed by such an "arbitrary" action. Representatives of five countries, which together supplied 80 percent of the oil then entering the world oil trade, reacted by organizing OPEC in 1960. Their initial goal was to restore prices to the previous levels.

OPEC had mixed success during the 1960's. The trend of prices actually paid for crude oil was steadily downward throughout the decade, reaching about $1.20 per barrel for Persian Gulf crude oil in 1969. But the per-barrel revenues of OPEC members actually rose (to 80-90¢ for Persian Gulf crude oil in 1969), because OPEC members succeeded in renegotiating the oil companies' concessions. By 1969, the typical company producing Persian Gulf crude oil was netting only 20-40¢ per barrel, and out of this was paying all costs of discovery and production.

Blair admits that the rapid increase in the number of firms selling

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oil on world markets and the appearance of OPEC led to a sharp erosion of the monopoly power and profits of the international oil companies. However, he argues that this erosion was reversed by the third fundamental change to hit the world oil market—the 1973-74 oil embargo by the Arab members of OPEC and the subsequent quintupling of world oil prices. Suggesting that (but never explaining how) the Seven Sisters actually encouraged the embargo, Blair contends that there is no question that they enjoyed soaring profit margins on their sales of OPEC oil. To document this charge, he presents a table claiming to show that Saudi Arabia netted only $7.00 per barrel when it raised the price of light Arabian crude oil to $11.65 in January 1974—by inference, the oil companies were reaping the $4.65 per-barrel difference. This inference, however, is premised on a misapprehension of the facts. In a background paper for a Twentieth Century Fund Task Force Report (December 1975), Sidney Alexander examined the pricing history to which Blair refers:

> In a series of unilateral moves, the Persian Gulf producers hiked the posted price . . . to $11.65 in January 1974. The Saudi take on light Arabian crude was accordingly raised . . . to $7.00. Meanwhile the Saudis had acquired [without compensation] 60 percent of Aramco, which meant that 60 percent of the oil output would be theirs to sell . . . at 93 percent of the posted price. The result was that the average revenue per barrel was raised—not to $7.00 but to $9.31. In January of 1975, Saudi Arabia made a pretense of reducing the price of oil by reducing the price to $11.25 while simultaneously altering the terms of the concession, so raising the average take to $10.12. This level of take was maintained through September 1975, when it was raised to $11.17 and the market price to $11.51.

Since the embargo, Persian Gulf oil has been available to all buyers at a price no more than 50¢ per barrel (and in many cases less than 30¢) above the net take of the oil-producing countries. Because the oil companies pay all costs of finding, producing, and storing Persian Gulf oil, their net profits per barrel must be considerably less than 50¢—a figure that contrasts sharply with the net receipts of $12 to over $14 per barrel now received by the oil-exporting countries. In short, enormous monopoly profits are being reaped from the sale of OPEC oil—but on the basis of Blair's own evidence, it is a mistake to conclude that the private oil companies are the recipients.

WITHIN the United States, large oil companies are involved in all phases of the petroleum business: producing and selling crude oil, transporting crude oil from wellhead to refinery, shipping products and petrochemicals to marketers, and selling a variety of refined products and petrochemicals at wholesale or retail levels. In addition, some are significant suppliers of the most important alternative sources of energy: natural gas, coal, and uranium. Critics charge that the huge size of the oil companies, along with their

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horizontal and vertical integration, must imply an enormous monopoly power over American energy markets.

Unlike Engler, Blair knows that it is not so easy to get such monopoly power. Indeed, Blair is bothered by one troublesome fact: "Domestic oil is certainly not one of the nation's most concentrated industries." Given its low concentration, he argues that monopoly is possible only because there are strong methods of control: a variety of intercorporate relationships and direct aid from policies enforced by state and Federal governments.

Blair believes four kinds of intercorporate relationships have fostered the domestic oil monopoly: joint ownership of pipelines, joint ownership of offshore leases, interlocking directorates, and the "inner community" of the Rockefeller companies. Pipelines do pose a potential monopoly problem. Because they are expensive to build, and relatively few are needed in any geographic area, pipelines tend to be constructed by joint ventures. But most of the nation's important pipelines come under the "common carrier" regulatory jurisdiction of the Interstate Commerce Commission. The I.C.C. requires that all customers using a pipeline be charged the same rate for the same service, and that rates be set so that profits are not excessive. Blair presents no evidence that the I.C.C. has failed in these areas.

The outer continental shelf is thought to be the most promising source for new oil and natural gas within the "lower 48" states. More than 100 firms—including several large non-oil industrial companies—have already invested large sums, frequently in joint ventures, in the search for oil on the outer continental shelf. To acquire rights to any oil on 4 million acres of the outer continental shelf, the oil companies paid the United States Treasury nearly $12 billion from 1970 to 1974. Because rights must be acquired prior to any drilling, and the most promising tracts cost tens of millions of dollars to acquire, oil companies maintain that joint ventures are a device for sharing the enormous geological and financial risks. Critics, including Blair, argue instead that joint ventures are a vehicle for suppressing competition. Though the issue merits additional study, present evidence contradicts the monopoly argument. Examination of outer continental shelf bids shows that the winners have frequently paid bonuses that are tens of millions of dollars higher than their nearest competitors. For example, at the recent (October 1977) Alaskan lease sale, Phillips bid $46.5 million for a tract where the second highest bid was only $747,000. Successful collusion among the oil companies would certainly eliminate such unnecessary competitive waste. Moreover, after a detailed examination of offshore bidding from 1954 to 1973, Edward Erickson, who has probably spent more time than any other academic economist studying outer continental shelf joint ventures, has concluded:

> Out of a total of 776 joint ventures that submitted winning bids, only 91 consisted of majors alone. But 295 consisted of nonmajors only. One

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> half of all joint ventures consisted of both majors and nonmajors, but the turnover in bidding partnerships was significant. There were no winning combines in excess of three firms which consisted only of majors. These data are a very strong indication that offshore activity is undertaken in a very competitive economic environment.

The charges that the domestic oil monopoly is based on interlocking directorates and a Rockefeller community of interest must tug at the heartstrings of all populists. I regard the Rockefeller charge as frivolous, though I have no evidence to rebut it—and Blair has no evidence to support it. To believe in the power of interlocking directorates, one must believe in the near omnipotence of bankers. Since the passage of the Clayton Act, it has been illegal for the same person to be a director of two or more competitive companies. Thus when Blair refers to interlocking directorates, he means, for example, a New York bank having representation (by two different people) on the boards of two oil companies, or an employee of an oil company serving on the board of a bank doing business with other oil companies. In recent years, however, corporate directors (especially "outside" directors, who are not also full-time employees of the firm) have come under fire for not knowing enough about the activities of the companies they direct. Corporate critics repeatedly point out that a board typically meets for fewer than 12 days a year, barring a crisis. Is it really plausible that a successful monopoly in a business as complicated and unconcentrated as oil can be coordinated by such busy people, who almost always have other important full-time jobs?

Blair admits that the four types of oil company interrelationships he identifies have often proved inadequate to prevent competition. Thus he indicates another essential control mechanism:

> The control of reserves, production, capacity, and sales held by the largest firms, even though reinforced by intercorporate relationships, has simply not been sufficient to prevent the sporadic appearance of "distressed" oil [i.e., surplus oil that causes prices to fall]. Confronted with this unpleasant reality, the petroleum industry, probably more than any other field of business activity, has been remarkably successful in inducing the state to shore up the private means of control with the mandatory powers of government. The principal forms of government intervention have been directed toward the limitation of domestic production and the restriction of imports.

Two government policies—state-enforced production limitations and Federally enforced oil-import quotas—held domestic crude-oil prices above competitive levels from the late 1930's through the 1960's. Beginning in the early 1930's, most of the large oil-producing states began to enforce market-demand prorationing regulations that limited the total amount of crude-oil that could be produced from each well. State prorationing laws were passed in order to remedy the economic distress resulting from tumbling crude-oil prices. Crude-

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oil prices were falling because of a drop in demand, caused by the Depression, and a concurrent rise in supply that resulted largely from the "fortuitous" discovery of the giant East Texas oil field. Prorationing reversed the price fall. Unfortunately, because there were only a few important oil-producing states, they were able, with the aid of the Federal government, to coordinate their respective prorationing policies; as a result, such regulations offered a tool by which monopolistic crude-oil prices were maintained long after the Depression.

During the late 1940's, the United States was self-sufficient in crude oil, and the Gulf Coast states actually exported sizeable quantities to Western Europe. But toward the end of the decade, their share of the Western European market was quickly eroded by expanding sales from lower-cost Persian Gulf sources. By 1950, Persian Gulf oil was supplying most of the oil needs of Western Europe. Having won nearly total control of this market, some Persian Gulf producers began exporting oil to the huge American market. Oil imports threatened to undermine the Gulf Coast states' ability to use prorationing to fix a high price for American crude oil: In the face of swelling imports, the high price of domestic crude oil could be maintained only if the oil states continually cut back the allowable production of domestic oil by tightening their prorationing policies. But even if tighter prorationing policies succeeded in preventing a price fall, domestic producers knew that their share of the total profits would decline because of their falling share of the American market. The domestic producers sought to end this erosion of their product's market share by persuading the Federal government to restrict oil imports. Their pleas were rewarded in 1959 when President Eisenhower issued an executive order establishing mandatory oil-import quotas. (The fact that most of the international majors were arguing for higher American oil imports at this time casts doubt on the supposed unity of the domestic and international oil companies.)

Prorationing and oil-import quotas did result in crude-oil prices above competitive levels within the United States until the end of the 1960's. But the situation changed dramatically in the early 1970's —United States oil supplies were no longer sufficient to meet most domestic demands, and the price of foreign oil had begun its seemingly inexorable rise. Prorationing has had almost no restrictive effects on output since 1972, and oil-import quotas were abolished in May 1973. The domestic oil industry no longer benefits from these government-sponsored monopolistic restrictions. Those who continue to blast the industry for enjoying the fruits of such restrictions are living in the past.

Both Blair and Engler also make other popular but misguided or misleading criticisms of the large oil companies. For example, Blair devotes an entire chapter to the "crippling of the private branders" by the giant, vertically integrated oil companies. He cor-

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rectly describes how independent gasoline retailers pioneered cost-cutting innovations (like self-service stations and high-volume stations specializing in the delivery of gasoline) and as a result made substantial competitive inroads at the expense of the integrated majors throughout the 1960's. But on the basis of a few special cases and data purportedly showing that the majors' share of total gasoline sales rose in 19 of 38 states in 1973, Blair concludes that "gains of the private branders came to an end in 1973," because the integrated companies denied them supplies and subjected them to a price and profit squeeze. Available comprehensive data flatly contradict this conclusion. The annual Lundberg surveys of nationwide gasoline sales show that the market share of the 15 major integrated oil companies has fallen for the last seven consecutive years, from nearly 77 percent of the total domestic gasoline market in 1969 to about 67 percent in 1976.

Depending on the vagaries of supply and demand, the annual after-tax profits of any given oil company tend to fluctuate rather widely. Nevertheless, the after-tax profit rate of the oil industry has historically been roughly the same as the average for all American manufacturing. Because the allegation that the oil companies are reaping "obscene" profits has become a key element of anti-industry rhetoric, critics are usually discomfited by this fact. Engler employs two strategies to deal with this inconvenience. First, he lists the absolute after-tax profits reaped by the large oil companies. To him, the mere fact that in 1973 Exxon earned $2.4 billion and Gulf $800 million is sufficient proof of guilt. Of course, since "obscenity" is in the eye of the beholder, a more tolerant judge of the industry might note that the leading oil companies rank among the largest firms in the world and that their high profits tend to be closely (and causally) related to their correspondingly high equity investments. Engler's second strategy is simply to use inaccurate profit figures. He claims that Aramco's four American partners (Exxon, Mobil, Standard of California, and Texaco) earned a "profit of $4.50 per barrel in 1974 . . . on a barrel costing less than 15¢ to lift." A simple calculation, however, gives the lie to this assertion. Aramco production averaged more than eight million barrels per day in 1974. If Engler is correct, and the four partners received net profits of $4.35 per barrel, their combined earnings from just this one (admittedly large) venture would have exceeded $12 billion in 1974. But the combined after-tax profits of these four companies from worldwide operations—including non-oil ventures—were $6.6 billion in 1974.

Few would deny that there is a tight nexus of interest between the oil industry and the American government. Indeed, how could things be otherwise? Energy (especially oil) is indispensable to the American economy, and the profits of the oil companies depend in large part on government policies. Blair and Engler, however, take this commonplace observation a step further—and suggest that the large, integrated oil companies have been aided by their government allies in their efforts to thwart competition from smaller, typi-

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cally non-integrated competitors. Examination of three recent government laws and regulations raises questions about the validity of such a suggestion. First, the infamous oil-depletion allowance was abolished for all except small, low-volume crude-oil producers in 1974. Second, since 1974, the entitlement regulations of the Federal Energy Administration have required integrated refiners with above-average supplies of low-cost, "old" crude oil (low cost because of price controls) to pay several billion dollars to refiners with below-average crude-oil supplies. Finally, the output from low-volume "stripper" wells (i.e., those producing fewer than 10 barrels per day and largely owned by independent crude-oil producers) are exempt from all crude-oil price controls. At a minimum, all this suggests that a distorted view of the "oil lobby" results from ignoring the influence exercised by thousands of independent oil companies behind closed doors in Washington and in the state capitals.

CONTRARY to their assertions, then, neither Blair nor Engler offers persuasive empirical support for the accusation that the large, integrated oil companies are now exercising significant monopoly power in any energy market. Yet variants of this charge are reported almost daily, and the repeated denials of oil company spokesmen inevitably sound self-serving. Less widely reported, however, have been the views of a group some might regard as both more qualified and objective—academic economists specializing in the study of the organization of the oil industry. In a recently published study, *Oil Company Divestiture and the Press: Economic vs. Journalistic Perceptions* (Praeger, 1977), Barbara Hobbie reports the results of what is probably the first systematic attempt to assess the evaluation of the oil monopoly issue by these specialists. Although the 21 usable responses from her sample of 29 academic economists (selected because they had testified or published extensively on the issue) confirm that there are always specialists on both sides of any issue, a sizeable majority (16) disagreed with the statement that "the major, integrated United States oil companies currently possess monopoly power in one or more stages of the oil business."

Nonetheless, the oil companies continue to be the public scapegoats for complex energy problems. M.A. Adelman alluded to this situation before a Senate Committee in January 1975:

> The public attitude toward the multinational oil companies brings me back to the bad old days of Joe McCarthy. Then, many of our people, frustrated, angry, and a bit fearful of the unreachable leaders of the "monolithic Communist bloc," went out determined to find and bash an enemy at home. Today, unable to do anything about high oil prices, many of our citizens are inclined to take it out on the multinational oil companies.

Moreover, because so much public attention is devoted to remedying (or preventing) the alleged abuses of the oil companies, attention is diverted from the energy policy questions that require serious and

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sustained analysis. Among the most important of these are how to reduce the enormous monopoly power currently exercised by OPEC and how to reduce domestic petroleum demands and expand petroleum supplies.

The Revolt of the Upper-Middle Class

ABRAM N. SHULSKY

At first glance, it is hard to see why Fred Hirsch's *Social Limits to Growth** has been taken so seriously by so many reviewers. It reads for all the world like the ill-tempered musings of an aging banker, delayed in a Friday afternoon traffic jam on his way to the Hamptons: Life was so much pleasanter before there were all these cars on the road, when the beaches weren't so crowded, when father could take the well-staffed parlor car on the Long Island Rail Road instead of having to drive the Long Island Expressway.

It is no secret that over the past century the standard of living of the upper-middle class has declined in certain important respects—graciousness and convenience, as measured primarily by the number of servants available to do one's bidding, and exclusivity of access to desirable places and events. The relative increase in the position of the working class has led to both the absence of a large labor pool willing to go into domestic service and the presence of many more competitors for access to the good things in life that used to be the preserve of a few.

These facts are not new, and their retelling would hardly justify all the attention that has been paid to this book. What is new, however, is the change in the evaluation of these facts. Until recently, the democratization of our society in the economic sphere would have been the cause of general self-congratulation (except, of course, for our elderly banker, to whom no one would have listened anyway). That this democratization resulted less from increased government regulation than from the unconscious working of self-regarding forces would have been regarded by many as an additional bonus—a happy marriage of the "invisible hand" of Adam Smith with Hegel's "cunning of reason."

For Fred Hirsch, however, this phenomenon is not a sign of the success of our political-economic system but a portent of its failure. His verdict is based upon an analysis of the changing character of the goods people seek as their standard of living increases. Once their basic material needs are satisfied, individuals pursue what Hirsch calls "positional goods," i.e., those goods (servants as opposed

* *Social Limits to Growth*, by Fred Hirsch. A Twentieth Century Fund Study. Harvard University Press. 208 pp. $10.00.

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to appliances, a job with authority over others as opposed to a job with a good salary) whose possession by some implies their non-possession by others. Goods may be "positional" for various reasons: the logic of the situation, as in the case of servants; natural scarcity, as in the case of especially scenic or pleasant vacationland; "social" scarcity, as in the case of a downtown apartment, which is valuable because it is at the center of a lot of human activity; or sheer contrivance, as in the case of (deliberately) "limited edition" books or *objets d'art.*

Unlike many other critics of capitalism, Hirsch does not regard the desire for these various sorts of positional goods as in any way unnatural or morally objectionable. He finds modern capitalist societies deficient not because they foster such desires but because they are unable adequately to satisfy them. In his words, "The flaw in the affluent society lies not in the false values of affluence but in its false promise."

HIRSCH presents three reasons why the increased importance of positional goods brought on by economic democratization poses a serious problem for our political-economic order. *First, the intensified scramble for positional goods results in a wasteful misallocation of society's resources.* Hirsch discusses three mechanisms by which this competition is currently resolved—auction (the sale of a Rembrandt to the highest bidder), crowding (every one goes to the beach at the same time, but each person's pleasure is reduced by the presence of large crowds), and screening (the imposition as a job requirement of higher and higher levels of educational achievement, even though this additional education does not enhance job performance).

Hirsch notes, but then proceeds to ignore, the fact that auction involves no misallocation of resources; the Rembrandts change hands at ever higher prices, but no real economic resources need be consumed in the process. The same cannot be said for crowding and screening; in either case, real resources may be wasted in the competition for scarce goods. For instance, the total enjoyment a city's population derives from its beaches may be decreased by crowding. (In precise terms, each individual might prefer to go to the beach half as often, provided that it would be half as crowded when he got there—but no individual has this choice, since his own restraint will not, by itself, produce a similar restraint in others.) Similarly, the excess educational credentials accumulated in the course of competing for attractive jobs represent a loss of time and effort for the society as a whole.

It is easy to see why Hirsch chooses not to rely too heavily on his argument concerning misallocation of resources (although he never quite abandons it either): He wants to provide a critique of capitalism, but it turns out that misallocation is best avoided by that mechanism (i.e., auction) most characteristic of the free market system. Furthermore, the wastefulness of the other mechanisms can

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be reduced by allowing market forces to operate (or, when necessary, creating new conditions under which they can). A lonely datum, lost among the many vague impressions with which the book is filled, tells us that, because of a surplus of college graduates in the 1950's and 1960's, "between 1969 and 1973 the excess in average mean income of male college graduates over high school graduates was reduced from 50 to 41 percent." Over a long enough period of time, this development would affect the number of students in college, as well as the expectations on which they base their decision to attend.

Second, the struggle for positional goods leads to an "over-commercialization" of life, a tendency for a greater and greater part of human activity to be drawn into the market place. Since we are living in what Edmund Burke called the age of "sophisters, economists, and calculators," the object of Hirsch's concern here might be characterized as a rise in price of the "unbought grace of life." Or to put it into our banker's terms, as Hirsch conveniently does, "if one's own income remains unchanged while the income of other people rises [or if one's income rises less rapidly than others'], one's command over the positional sector will fall. The income that earlier supported a downtown apartment, a country home, the acquisition of elite educational qualifications, or simply an active life protected from the crowds, is no longer sufficient."

This situation prompts a greater attention to money-making and an increased desire to maintain or better one's relative economic position. The result is a greater commercialization of society—compared, first, to a time when most of the populace was too busy meeting basic material needs to compete in the positional sector, and, second, to what individuals might choose if they could foresee the collectively frustrating result of their individual striving for "success." The first comparison merely restates the problem democratization represents to those whose high relative positions can no longer be taken for granted. The second assumes that individuals never catch on to the elusive character of success achieved in competition with others. This might be so, but we are not presented with any evidence; perhaps our banker's son will grasp the fundamental disappointment of his father's life, and will decide to abandon banking and restore antique furniture in Vermont instead.

Third, popular attachment to liberal capitalism is undermined by the disappointment that necessarily occurs when rising productivity fails to provide everyone with the expected increment in positional goods. Here, I believe, Hirsch has finally gotten somewhat closer to the genuine political problems of present-day capitalist societies. To the extent that liberal capitalism is understood only as a political and social mechanism for satisfying individuals' desires, it will stand or fall on how well the economic growth it fosters meets those desires. In particular, if an increasingly influential upper-middle class finds that economic growth is always something of a disappointment (because, having satisfied its basic material needs, it now

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seeks more and more positional goods), then serious political consequences are likely to follow. Of course, if this dissatisfied class were composed primarily of people like our aging banker, the potential damage would be limited. But in fact this class today includes society's most potent shapers of public opinion and public policy—academics, journalists, intellectuals, and government officials.

It need hardly be said the whole thrust of Hirsch's analysis is profoundly anti-egalitarian. If positional goods are as important and as desirable as Hirsch claims they are, and if by definition they can be enjoyed only by a few, then a genuinely egalitarian affluent society is a chimera. More than that, any attempt to procure a wider distribution of positional goods would seem destined only to increase the general level of frustration.

Thus it initially comes as a surprise that Hirsch's few policy prescriptions for remedying the difficulties produced by the struggle for positional goods appear to go in the direction of greater egalitarianism. First, he proposes a government-induced reduction in pay for the most sought-after jobs. This might indeed lessen the competition for intrinsically desirable jobs, but it would also leave the holders of such jobs increasingly frustrated at their inability to obtain other positional goods—and they tend to be precisely the kind of people who have the greatest desires for things like downtown apartments and country homes.

Therefore, Hirsch advocates that this reduction in pay be rendered more acceptable to such people "by making access to [positional] goods less attainable with money and more available without it—that is to say, by partially removing positional goods from the commercial sector and making them more available through public access or public allocation on a nonmarket basis." Given the definition of positional goods as those which cannot be available to everyone simultaneously, the first method of distribution ("public access") obviously must be dismissed. It is "public access" that has turned the Long Island Expressway into the world's longest parking lot. The heart of the matter clearly is "public allocation on a nonmarket basis."

Hirsch does not explain what this nonmarket basis might be; he wants it to be derived from a shared sense of justice that will restore the moral legitimacy which he believes the market societies have lost. In practical terms, this means that the locus of competition for positional goods will shift from the marketplace to the political arena. Such a shift might be defensible if it were backed up by a widely shared and strongly held conception of justice, but it is not clear how political competition for positional goods will help us create one.

Like it or not, the only contender for the vacant ideological throne is socialism. To judge from the nature of Hirsch's practical concerns, it would appear that he believes the leisured and cultured upper-middle class will not come out losers if the positional cards are

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shuffled and redealt on this basis. He thus leaves himself open to the charge made by Martin Mayer in the *American Scholar* that he is one of those attracted to socialism because under socialism "people will know their place."

Of course, the rulers of many past societies have sought to keep the people in their place. They did this by praising a particular human quality or characteristic and then justifying their own predominance on the grounds of their allegedly exclusive possession of it. As a basis for rule, socialism has a distinct advantage over these past ideologies in that its "new class" dispenses with the tiresome necessity of excelling in anything other than the proclamation of its own equality.

It is no great task to show that upper-middle-class dissatisfaction with capitalism (or attraction to socialism), though typically couched in egalitarian rhetoric, usually has its roots in fundamentally anti-egalitarian sentiments. Indeed, Hirsch's book unwittingly makes this clear to anyone who has eyes to see. But it would be a grievous error to believe that by pointing out this kind of hypocrisy (albeit often unconscious hypocrisy), one has thereby disposed of the problem. Whatever its sources, the widespread disenchantment of the upper-middle classes poses a grave threat to the health of liberal capitalism—and of course, to liberal democracy as well. It is exceedingly difficult for any political-economic order to flourish if it loses the good opinion of its more affluent and better-educated citizens. In this sense, at least, Hirsch has called our attention to what may be the most important internal dilemma facing liberal democracy.

Back to Basics

DIANE RAVITCH

A polemical book usually has one central idea, and the book stands or falls according to how well the case for that idea is made. *Our Children's Crippled Future,* * by Frank E. Armbruster, has two ideas that appear to be the same, but are not. The apparent theme is that American children are being cheated out of a sound education by trendy educators who have abandoned the tried-and-true methods of the past. Not far beneath the surface is another argument, charging that many things have gone awry during the past 20 or 30 or 40 years: Every educational innovation has been a waste of money; teachers are paid too much; classes are too small; children are disrespectful; middle-class values have been eroded; and all this has happened at the expense of the unknowing,

* *Our Children's Crippled Future: How American Education Has Failed,* by Frank E. Armbruster, with Paul Bracken. Quadrangle. 308 pp. $15.00.

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unwilling, hard-working taxpayer. Armbruster not only wants to go back to the basics, he wants to go back to the 1950's—or better yet, to the 1930's, when schools "upheld the standards and taught the essential subjects of middle-class America." The problem with the book is that the first idea, which is amenable to analysis and documentation, is constantly undercut by the second, which is simply nostalgia for what the author, at least, regards as a better time.

To be sure, the romantic excesses of the 1960's were ripe for debunking. Seldom have so many muddled ideas about the nature of children and education been so widely circulated in so brief a period—or, what is more, taken so seriously by government, foundations, and the schools themselves. Authority became a synonym for tyranny, schools were said to be prisons and teachers jailers, and it was claimed that children needed to be "liberated" from the repressive grip of books and tests and clocks and adult notions of what was best for children. For a time, this kind of rhetoric was in the mainstream of educational debate, but it faded along with the counterculture that both produced and sustained it. It is not surprising that a book like *Our Children's Crippled Future* should come along to attempt to sweep away the detritus of the 1960's. It is also not surprising, though it is disappointing, that Armbruster's book, like those of the radical critics, slips into the conventional mold of indiscriminately attacking American schools for failing (the radicals would say "destroying") American children, without acknowledging the genuine accomplishments of the recent past.

Armbruster uses college entrance examination scores and statewide test data from around the country to argue that standardized test scores have fallen steadily since the mid-1960's, and that this decline is cause for alarm about what is being taught in the schools. One by one, he examines and discards the reasons usually given for falling achievement levels. The problem is not insufficient funds, he says; if anything, the schools have been generously endowed with money that has been squandered (in his eyes) on higher salaries, extra personnel, audio-visual equipment, computer terminals, open classrooms, and other "gimmicks." Nor is the problem related to the socioeconomic status of the pupils, since achievement has fallen fastest among the brightest pupils, and since entire states have registered declines without undergoing any major demographic change. Nor is the problem parental attitudes, since polls show that parents of every social class want their children to master the basics. The real problem, according to Armbruster, is that standards have been eliminated in the schools: Educators have willingly adopted any harebrained scheme that makes their job easier and permits them to place the blame for their students' failures anywhere except at their own doorstep.

Now, although it is clear that standardized test scores have dropped in recent years, why this is so and what it means is not as obvious as Armbruster suggests. American society in 1978 is not what it was in 1938 or 1958, and no amount of wistful recall can

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bring back what is irretrievably gone. What Robert Nisbet has called "the twilight of authority" unhappily affects schools as much as other social institutions and cannot be willed away. Certainly, one should not dismiss lightly (as Armbruster does) the influence of television on habits of reading and learning and playing. No matter what they may tell pollsters about their belief in traditional learning, parents nonetheless permit their children to spend 30 to 50 hours each week passively watching television. Nor can one ignore the widespread availability of drugs—a problem almost nonexistent in 1958 and 1938—which, like television, induce passivity and escapism. And the family is no longer the stable institution it once was; it seems unlikely that children would have been entirely unaffected by the rising divorce rate and the increasing number of working mothers.

Armbruster gruffly dismisses all of these non-school social changes as irrelevant. He is interested only in standardized test scores as a simple and certain indicator of whether schools are doing a good job of teaching the basics. Nothing else matters, and he attacks, in turn, bilingualism, ethnic studies, work-study programs, and anything else that deviates from his conception of basic education. But although he frequently invokes history to advance his cause, his knowledge of history is spotty. For instance, he contends that bilingualism is unnecessary because traditional American schools taught non-English-speaking European immigrants in English. Armbruster seems unaware that there were good, traditional school systems in the 19th century with bilingual programs in German and Spanish, or that bilingualism is not just an educational fad but is now mandated by the Supreme Court and subsidized by Congress. He objects to ethnic studies programs not only because they are divisive and of questionable value, but because he believes that some groups (such as American Indians, African Negroes, and even Eastern Europeans) are likely to discover that their ancestors "compare unfavorably" to those of Central and Western Europeans. He worries that young Negroes (he never uses the word "blacks") might even be put in the uncomfortable position of defending "undemocratic, often savage groups" who were their forebears. On these and other matters, Armbruster begins with plausible positions and proceeds to discredit them with his arguments.

Armbruster and his associate Paul Bracken present massive documentation to support their charge that although America is spending more than ever for schooling, educational achievement is dropping at a rapid rate. (They sometimes even suggest a causal relationship—that achievement has dropped in response to the infusion of money for non-essentials and small classes.) They do show that achievement, as measured by test scores, has waxed and waned over the decades; it was apparently high during the 1930's, declined in the 1940's, rose again in the late 1950's, and started to fall in the mid-1960's. Without questioning the overall shape of this

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achievement curve, one may still wonder about the authors' ready acceptance of the comparability of test scores from 1916 onward. They don't provide specific data concerning the contents of the tests, the basis on which the test-takers were chosen (random or selected), or whether any part of the age group was not in school. One wonders too about the facile correlation between "educational progressivism" (whatever that means) and falling test scores, especially since many school systems in the high-achieving 1930's had already adopted the progressive methods that Armbruster holds responsible for the decline of the 1940's. It is equally plausible to link academic achievement to conditions in the job market: When jobs were scarce and educational credentials important, achievement levels were unusually high.

Behind Armbruster's veneer of rigorous analysis is nothing but a yearning to turn back the clock, to recreate the days gone by, when children were well-behaved and obedient, when criminals were promptly locked up, when "lascivious sex" and foul language were frowned upon, when people "went 'slumming' after dark in underprivileged areas, including Harlem." Those were the good old days. Now, educators "stress constantly how much effort and money parents owe their children," when they should be teaching children to be grateful to their parents. Now, "brutal violence stalks a sizable minority of our schools," and "experience tells us" (but not footnotes) that New York City teachers have been gang-raped in their classrooms. Now, the language, the dress, and the behavior of the slums are welcomed in the schools, instead of corrected. But this is not social analysis; it is the anxious expression of a person who is angered and puzzled by changes that he can neither comprehend nor control.

The intriguing question, which Armbruster scarcely considers, is *why* American schools began to shift away from their traditional emphasis on competition and achievement in the mid-1960's. To attribute the change solely to the influence of educational innovators, as Armbruster does, is to credit them with more power than they had. Their writings were a manifestation of, rather than an explanation for, an egalitarian movement whose reach extended far beyond the schools. Without understanding the causes and implications of this larger movement, the changes in the schools appear incomprehensible. Educational traditionalists were very quickly put on the defensive and virtually routed during the 1960's; how and why this happened is still only dimly understood. We know that the politics of schools is bound up with politics in general, because of lay control of public schools. But the connection among lay opinion, expert opinion, and educational policy has received little attention. Who decides *which* experts are to be listened to? How does it happen that the "early" James Coleman was warmly received as an advocate of desegregation, while the "new" Coleman is disqualified for having taken a public position against involuntary busing? After the courts, Federal agencies, state agencies, and

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unions have had their say in the policy process, is there any decision-making power left for local school boards? We have too little knowledge of where policy is made and how it changes. It may be that the very vulnerability of the public school to power struggles between warring factions has led to the bureaucratic insulation of the policy process, but whose values have been included and whose excluded?

"Back to basics" is an idea that ought to receive universal assent, yet doesn't. The reason is that there are legitimate concerns about the consequences of imposing rigorous standards and then flunking students who fail to meet them. Our educational system is geared to moving the maximum number of children up through the grades to high school diplomas. The practice of automatically promoting almost everyone, regardless of his level of learning, was not started by innovative educators in the 1960's. It began in the 1930's and 1940's in an attempt to reduce the number who had not been promoted and who would ultimately drop out without finishing eighth grade. Many educators today prefer to do without standards, fearing that their reintroduction would cause a significant number of children to drop out before getting a high school diploma. This system of automatic promotion, which gives high school diplomas to functional illiterates and necessitates remedial reading in college, has inspired a widespread public rebellion. The back-to-basics movement is one indication of this, as are calls for teacher accountability, voters' rejection of school bond referenda, and growing demands for state (and even Federal) tests of minimum competency as a requirement for graduation.

Clearly, something new is needed, and a reemphasis on basic skills in the early years should be the first priority for parents and teachers. But the back-to-basics movement will be handicapped, perhaps fatally, if it comes to represent not just sound educational practices but nostalgia for a vanished era, when values were clear-cut, authority was unchallenged, and slow learners failed year after year.

Car Wars

EUGENE BARDACH

ONE of the methodological stratagems used by social scientists who study their own societies is known as "Martian Viewpoint." This device encourages the observer to think about the technologies of everyday life as though they were either odd or marvelous. For example, Erving Goffman has pointed out that the modern house, with its gas jets and electrical outlets, is potentially a lethal instrument. It is a tribute to our biological, social, and cultural

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adaptability, Goffman implies, that houses are in fact rarely used for destructive purposes. Now, in *The War Against the Automobile,** B. Bruce-Briggs has applied Martian Viewpoint to our most common transportation technology, and he finds it a wondrous thing. His ruminations in this vein are not only persuasive but witty as well. They deserve to be quoted at some length:

> The American mass transportation system consists of three principal elements. First, part of the land area of the nation is dedicated as rights-of-way for the system. . . . There are about 3.8 million miles of these thoroughfares and they give access to almost all the land in the United States. . . .
>
> The second element in our mass transportation system is the 130 million individually operated vehicles. Almost all of these have four wheels with synthetic rubber tires and are individually powered by mechanisms that mix air and liquid hydrocarbons carried in the vehicles to produce kinetic energy. These vehicles can operate on any of the thoroughfares of the system, so they have great flexibility of movement. . . . The vehicle is operated by one person who, sometimes after negotiation with the other people in the vehicle (they can also carry up to eight passengers, but usually one to four), decides where it shall go. . . .
>
> Most individually operated vehicles are privately owned and maintained. . . . The owners purchase the liquid hydrocarbons required to fuel them and the rubber tires necessary to make them roll, and are responsible for maintaining the machinery. . . .
>
> The third element in the American mass transportation system are the operators themselves. Approximately 125 million Americans, which is almost all adult Americans, have a reasonable degree of competence in negotiating these vehicles on thoroughfares. Since they are performing this "labor," they do not charge themselves for it.

Bruce-Briggs likes—nay, loves—the automobile and the "mass transportation system" that is based upon it. Compared to lightly mechanized personal transportation systems like walking or bicycling, the automobile system is more rapid and more comfortable. Compared to heavily mechanized collective transit systems like subways and buses, it is more flexible, affords greater privacy and personal security, and is more reliable. It is also fairly cheap and offers relatively easy access to almost all actual or potential users. Finally, for many users there are non-transportation benefits as well—the opportunity to exercise driving skills, pride of ownership, and for some, the intimacies of the boudoir.

Bruce-Briggs' affection for the automobile is undiminished by the many allegations concerning its misconduct, its bad character, or its physical repugnance. These allegations are "phony," he says,

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* *The War Against the Automobile*, by B. Bruce-Briggs. E. P. Dutton and Co. 244 pp. $10.95.

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and his rebuttals are generally quite deft. Does the automobile system "discriminate" against the poor? No more so than the systems that distribute food, clothing, or housing "discriminate" against people without much money, says Bruce-Briggs. Are we "paving over" the countryside for the sake of the auto? Hardly. What was "paved over" was not "the countryside" but the network of existing dirt roads: Since 1921, the United States has added only 0.6 million miles to the 3.2 million miles then in service. Has the automobile "destroyed our cities"? No, declaims Bruce-Briggs, consumer preferences for suburban living are doing that, and while these may be abetted by the automobile, they are in no sense created by it. Is the automobile "a status symbol"? Yes, but then so is practically everything else. Doesn't "Detroit" make lots of profits? In the aggregate, yes, but not per individual unit of output and not compared to the rate of return in other manufacturing industries. Don't automobiles embody and express adolescent virility fantasies? Perhaps for some people they do, but so what?

True, automobiles do emit noxious exhausts. These are clearly unaesthetic and some of them might be harmful to health, although the evidence is inconclusive. In any case, as Bruce-Briggs correctly points out, offensive emissions are a defect inherent not in automobiles per se but in a particular type of engine. In the one-hundred-year history of automotive engineering, it is only within the past 10 or 15 years or so that much serious brain power has been devoted to studying the pollution characteristics of the automobile's propulsion system. There is no reason to think that technical solutions will be particularly hard to come by, although there may be some difficulties concerning their costs. Indeed, as Bruce-Briggs tells it, the engineers have performed creditably in this regard already. In the late 1960's, in response to public pressure and Federal legislation, they managed to cut emissions to 30 percent of their uncontrolled level. Unfortunately, future progress in pollution control will depend as much on wise policy as on clever engineering, and wise policy has been in short supply in this area. Not only did the Clean Air Act impose unreasonably stringent standards on new autos, but it also created (partly as a consequence of these standards) a climate of regulatory uncertainty that has made all parties —the government, the industry, consumers, and breathers of air— worse off than they needed to be.

In answer to the charge that "Detroit's gas-guzzling monsters" are seriously depleting the world's energy stocks, Bruce-Briggs offers the by now familiar arguments that the neo-Malthusian pessimists have always been wrong and that technological innovation and higher prices will impel the discovery or creation of new resources and new ways to use them. These arguments are basically sound, but an even stronger one can be made: There is nothing especially wrong with guzzling gas as long as the prices people pay for the right to do so are not too low. After all, why should we single out

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this particular form of gluttony for special opprobrium? By some lights, dining in the manner of Julia Child could be considered even more immoral, since it depletes the world's food stocks and "deprives" not generations in the remote future but people who are alive and hungry today.

Are current gasoline prices in some sense "too low"? In as much as the present price of gasoline embodies a huge economic rent to the owners of petroleum resources (in addition to compensation for the relatively low cost of extraction), it would appear that gasoline is priced too high, not too low. Of course, from an economic point of view the "correct" market price for a barrel of oil should closely reflect the (discounted) long-run replacement cost of its value as an energy resource, and it could be that high present-day economic rents offset artificially low expressions of the long-run future value of energy in today's energy markets. In any case, the question is a complicated one; Bruce-Briggs deals with it only implicitly, and it is not clear where he comes out. On the one hand, he clearly does not like seeing so much wealth transferred to OPEC, particularly to the Arabs. On the other hand, today's high OPEC price in effect moves the future into the present, and he obviously relishes the prospect that the technological advances he so firmly believes in will come about a lot sooner than they otherwise might have.

Of congestion and parking space shortages Bruce-Briggs has disappointingly little to say. It is hard to see why auto safety merits chapter-length treatment (putting it in a class with pollution and fuel-economy issues) while congestion gets only about two pages, for it is the only feature of the present "auto mass transit system" that seems to me truly problematic. He is right to observe that much of "the problem" is a result of accelerating expectations, and that congestion is more a sign of the *success* of the automobile than of its failure. Still, there are genuine issues here. Bruce-Briggs acknowledges, for instance, that access to urban water crossings (bridges and tunnels) should be rationed by a more economically efficient toll structure. Yet this is his only discussion of roadway pricing, an idea much debated in transportation economics, and it is not obvious why Bruce-Briggs believes it relevant to water crossings but not to other portions of the roadway system. Bruce-Briggs' reluctance to think seriously about pricing practices and policies also leads him to misstate somewhat the issues concerning the alleged "subsidy" to automobile use. While he correctly dismisses as unimportant the discrepancy between total public expenditures on the system and total public revenues, he misses the point that subsidies to the *marginal* system user—who gains access to the highway network "for free"—can generate congestion, which in turn generates political pressures for excessive investment.

Such omissions and misstatements are symptomatic of the main weaknesses of the book—its ceaseless striving for effect, its commitment to the hard sell, and its consequent tendency to sacrifice

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accuracy and fairness. Thus Bruce-Briggs lambasts Ralph Nader for not presenting "one scrap of comparative data" in *Unsafe at Any Speed* showing that the Corvair was in fact less safe than other cars. This is true, but Bruce-Briggs neglects to mention that a well-known study published in 1971 by the Highway Safety Research Center at the University of North Carolina clearly supported Nader's arguments. The author's excessive polemical zeal may also be responsible for his failure to catch some striking numerical errors in his text that conveniently support his argument. One such error overstates by a factor of 10 the costs per life "saved" by Federal auto safety standards. Another imputes a population density of 100,000 persons per square mile—"higher than Manhattan"—to my own city of Berkeley (and to Cambridge, Mass., as well). This is about 10 times its true density. As a sharp social observer and sometime visitor to the Bay Area, Bruce-Briggs should have known better. But this ridiculous statistic fitted his polemic about the alleged preference for urban crowding of "new class" academics and intellectuals, and no mental cop was on duty to protect him from his own reckless intellectual driving.

It is this new class that Bruce-Briggs blames for the "war against the automobile." Most people, he claims, think the automobile is as wonderful as he thinks it is; only new class intellectuals, academics, journalists, bureaucrats, and their ilk hate the automobile. They hate it, Bruce-Briggs says, because they hate mass society, business values, technological civilization, and all their associated symbols, of which the American automobile is surely the most prominent. In their attempts to place unreasonable restrictions upon the use of the automobile, this new class has been joined from time to time by certain cynical downtown business interests and by upper-middle-class suburbanites who would like to clear other people's cars off the road to make room for their own.

Can the new class be stopped in its war against the automobile? The answer obviously depends in substantial part upon the size and composition of its forces. On this matter, Bruce-Briggs is not very helpful. Although there clearly is something to his general notion that a particular social class is spearheading opposition to the automobile, he never defines that class with adequate precision. He goes on at great length about new class preferences for backpacking over cross-country motorcycle riding and for dense urban environments over suburban developments, and there is a sprinkling of snide allusions to Hotchkiss, Princeton, long hair, and Volvos. All of this can sometimes be illuminating as well as provocative, but it is no substitute for careful specification of exactly who (or what) constitutes the new class.

This is a complex and difficult question, but I believe that the defining characteristic of the new class should be sought not so much in its hostility to things like suburbia and the automobile as in its predilections for "meaningful work" and "social reform."

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The media, public-interest groups, universities, and certain government agencies themselves have become the favored professional and political niches of the new class. From these strategic positions, the new class has successfully imposed an excess of regulation not only on the automobile but on many other features of contemporary society.

Thus, the future influence of the new class is most likely to be determined by how we collectively come to redefine the role of government in American society—whether we permit government to continue to intervene in more and more aspects of our lives, or whether the growing awareness of the limits of what government can usefully accomplish succeeds in reversing this trend. The real political defense of the automobile will be secured not by the sort of motorists' lobby that Bruce-Briggs lamely calls for, but by victory —or at least stalemate—on this broader intellectual and ideological front. Bruce-Briggs' incisive manifesto should prove a most valuable weapon in that much larger war.

The Real Meaning of "Income Redistribution"

MARC F. PLATTNER

In recent years, the issue of income redistribution has increasingly moved toward the center of public policy debate. Egalitarians who have become disillusioned with the Great Society strategy of attempting to promote equality of opportunity now are advocating income redistribution as a quick method of achieving equality of result. Political theorists are turning their attention to questions of what constitutes a "fair" distribution of income and what government may legitimately do to alter an existing distributional pattern. And economists, confronted with the enormous growth in spending on social programs over the last decade and a half, are showing heightened concern about the effects of all this transferring of income on the structure and performance of the economy.

All these diverse strands of thought are represented in a volume simply entitled *Income Redistribution*,* which contains the edited proceedings of a May 1976 conference jointly sponsored by the American Enterprise Institute and the Hoover Institution. The conference's lengthy roster of distinguished speakers and commentators embraced a wide range of professional backgrounds (public officials, economists, and social and political theorists) and political perspectives (conservatives, moderates, and various brands of liberals). The proceedings were divided into five separate panels that dealt with

* *Income Redistribution*, edited by Colin D. Campbell. American Enterprise Institute. 267 pp. $9.75 (cloth), $4.75 (paper).

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the following topics: "Welfare Reform," "Income Maintenance and the Economy," "The Case for the Progressive Income Tax," "Equality and Efficiency," and "Where Do We Go from Here?"

The last of these, which reflects in microcosm the diversity of the conference as a whole, is in many ways the most instructive panel of all. The two principal papers are by sociologist Robert Nisbet and by former Secretary of H.E.W. Wilbur Cohen. Nisbet presents a learned socio-historical indictment of egalitarian and redistributionist zeal, which he sees as the chosen vehicle of power-hungry intellectuals and as a dire threat to individual freedom. Wilbur Cohen, by contrast, offers a practical, businesslike assessment of the near-term options for further legislation in the areas of national health insurance, social security financing, and welfare reform.

The most critical commentator on this panel is economist Henry Aaron (who has since been appointed Assistant Secretary of H.E.W. for Planning and Development). Aaron scoffs at Nisbet for implying that redistributionism is a newly threatening force on the American political scene. According to Aaron, not only has the United States long been engaged in the business of redistributing income, but "it is simply impossible not to redistribute income in the modern nation state. So long as the government provides any services at all and collects taxes to pay for them, some citizens will gain more than others and some may lose. . . . The nonredistributive state, like the unicorn, is a myth." In short, he seems to suggest that income redistribution is simply an inevitable and unremarkable byproduct of the ordinary business of government, and hence nothing to get very passionate about: Income redistribution is as American as apple pie.

Yet Aaron then turns around and attacks Wilbur Cohen, whom he acknowledges to be the man most responsible for existing social welfare legislation, because "Cohen's paper, like his entire career, is more or less silent on the issue of income redistribution. He does not tell us whether he wants more or less; he does not use his considerable public standing to promote distributional issues in the public consciousness, and I do not know why." In other words, Aaron now argues that support for implicitly—or even randomly—redistributive measures like social welfare legislation is *not* the same thing as support for explicit income redistribution. He thereby virtually admits that the call for redistribution which Nisbet finds so worrisome is indeed an essentially new feature on the American political landscape.

THIS confusion (or obfuscation) on Aaron's part points up an ambiguity that pervades not only this volume but the entire current debate over the issue of income redistribution. It is true that the ordinary tax and spending policies of any government will have some redistributive effects. For example, public support for libraries in effect redistributes income from those who don't use libraries to those who do. Similarly, Federal funding for highway construction redistributes income from those who don't use highways to those who do. But such programs clearly are not intended to have any

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consequences on the overall distribution of income. Although their redistributive effects may be of interest to economists, they are essentially irrelevant to the debate over income redistribution.

It is also true that any government that embraces substantial social welfare legislation is likely, in the aggregate, to be transferring income from the rich to the poor. Since the recipients of welfare spending generally must be needy in order to qualify for benefits, it can hardly be argued that the direction (i.e., from rich to poor) of the redistributive effects of such programs is accidental. Yet it is a mistake to conclude that the *aim* of such programs is to achieve a more equal overall distribution of income in a society rather than simply to meet the needs of specific elements of the population—the old, or the unemployed, or those who are otherwise incapable of providing for themselves. Relieving poverty will have the *effect* of making the distribution of income more equal, but that does not mean that the *intention* of anti-poverty programs has anything to do with the notion of reducing income inequality. It is only when the problem being attacked is seen as "inequality," rather than poverty or "need" of some kind, that we can talk about "income redistribution" as a policy. In this recently advocated and politically controversial sense of the term, "income redistribution" may be defined as a transfer of resources from the better off to the less well off *for the explicit purpose of reducing inequality in incomes.*

Placing so much emphasis on the distinction between effects and intentions will no doubt appear to some to be making much ado about little—yet this distinction goes to the very heart of the matter. It is not just conservatives like Robert Nisbet who point out that social welfare legislation has not in the past been justified in terms of achieving greater equality of incomes. The same point is made by venerable liberal champions of the Great Society. Here is a statement on this matter by conference participant Robert Lampman: "It is not an explicit goal, as I read public documents, to redistribute income toward less inequality, but many academics (as opposed to people in public office) have asserted that this has been an implicit goal of all this spending and taxing." In a similar vein, Wilbur Cohen responds to Henry Aaron that "in carrying out [social welfare] programs, it is neither wise nor necessary to debate the philosophical issue of whether we are for or against redistribution of income from one income class to another. That would be a fine discussion for the American Economic Association, or for the Brookings Institution, or for economists generally, but I do not think it is the kind of discussion that throws much light on policy or program development in the United States." Clearly, what is now taking place is an attempt by the "academics" and "economists" mentioned by Lampman and Cohen to bring explicit consideration of the goal of income redistribution into the public consciousness and onto the political agenda.

THESE remarks by Lampman and Cohen attest to the fact that the American polity has not previously embraced the goal of

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income redistribution, without indicating why this has been the case. The crucial insight regarding this question is provided by Walter J. Blum, whose paper appears in the panel on the progressive income tax, but whose observations are just as relevant to the spending side of the ledger. Blum notes that earlier (i.e., nonredistributive) justifications for the progressive income tax "were predicated on a broad meaning of private property that was strongly and generally held: *a person is entitled to his property but the government may take from him an amount that is thought to be a fair sharing of the cost of discharging public functions*" (emphasis added). He then points out that the new redistributionist justification for progressivity "would give a quite radically different meaning to the notion of private property. The larger message in essence seems to be that *an individual is entitled to keep only that portion of his resources which the government decides not to take for redistributional purposes*" (emphasis added).

This "larger message" is apparent in conference participant Arthur Okun's view that the proper degree of income redistribution should be determined on the basis of a trade-off between equality and efficiency. This means that the only legitimate check on redistribution to promote greater equality is the purely *pragmatic* consideration of a possible loss of economic efficiency. And this in turn implies that, contrary to the traditional and still widely held view, there is no *moral* basis whatever on which individuals can claim to keep income that they have earned.

It is understandable that egalitarians like Arthur Okun and Henry Aaron should embrace this new redistributional morality. What is surprising, however, is that it should also be endorsed by a conservative economist like Edgar Browning, another commentator on the Nisbet-Cohen panel. Browning criticizes Wilbur Cohen for discussing separately options for reform in health insurance, social security, and welfare; according to Browning, all these proposals for reform are "largely motivated by a desire for greater equality," and he chides Cohen for his failure to "realize" that they are essentially "alternative ways to redistribute income." Browning thereby wholeheartedly affirms the redistributionist view that the aim of social welfare programs is greater income equality, and he offers no *moral* objection to the transferring of income to achieve this end. Like Okun, he can find only *pragmatic* grounds (i.e., inefficiency) for opposing a wholesale redistribution of income.

As Browning makes clear in his recent article, "How Much More Equality Can We Afford?" (*The Public Interest*, Spring 1976), he believes we are already close to the point where further efforts to redistribute income will entail unacceptable costs in reduced economic efficiency. Okun and Aaron just as clearly believe that we still have a long way to go before that point is reached. Be that as it may, once the debate about redistribution is allowed to be carried on exclusively in these pragmatic and empirical terms, the moral case against redistribution is doomed, and the transformation in the

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meaning of private property pointed to by Walter Blum will become a reality. Up to now, the moral case against redistribution (or, to put it positively, the moral case for an individual's right to keep what he earns) has been so much taken for granted that it has practically been forgotten. But if the assault of the new redistributionism is to be resisted, that case must now be rediscovered and fully brought to light.

Anatomy of a Fiscal Crisis

JAMES RING ADAMS

THE Johnson years taught us to be wary of the reports of government commissions. LBJ's appointment of Presidential research groups seemed intended less to produce serious insights into issues like racism, violence, or student unrest than to give the public a sense that something was being done about them. The notable individuals who served on these commissions often contributed little beyond their names and a few snippets of "establishment" opinion, and the work of their largely anonymous staffs was frequently compromised or tendentious. So New York City insiders can be forgiven for any cynicism that they might have felt when, at the onset of the 1975 fiscal crisis, Mayor Abraham Beame announced the formation of a Temporary Commission on City Finances (TCCF).

As it turned out, the TCCF completely broke the Johnsonian mold. Its research, although challenged on some details, was generally quite solid, and sometimes of a very high order indeed. Several of its 14 interim reports influenced state and city policy almost as soon as they were released, contributing to the repeal or modification of several unwise taxes and stiffening the city's spine in labor negotiations. And even though the commission chairman, Judge Owen McGivern, later became Mayor Beame's campaign chairman as well, the final report presented the most thoroughgoing critique to date of the incumbent's strategy and performance during the fiscal crisis.

Much of the credit for the commission's success must go to Raymond D. Horton, associate professor at Columbia's Graduate School of Business, who served as staff director and author of the final report.* Although the final report draws upon material from several of the interim studies, it constitutes a major analytic contribution in its own right. The final report sets itself two tasks: to

* *The City in Transition: Policies and Practices for New York City*, final report of the Temporary Commission on City Finances. Published by the commission (June 1977). Copies may be obtained by writing to Room 709, Graduate School of Business, Columbia University, New York, New York 10027.

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explain the origin of the crisis, and to propose a number of specific steps to get the city out of it. But to accomplish these tasks, Horton first had to succeed at an even more difficult labor—cutting through the politically convenient mythology that has grown up around New York City's budgetary troubles.

During the past decade, New York's political leadership has shown an extraordinary ability to blame fiscal and economic problems on everything but its own decisions. Favorite scapegoats have been the anti-inflation policies of Republican Presidents, the supposed Federal favoritism toward the "Sunbelt," and the simultaneous in-migration of poor blacks and Puerto Ricans and departure of middle-class whites to the suburbs.

The final report does give some weight to these themes. It emphasizes the burden that the new arrivals placed on social services at a point when the city's economy was beginning to contract. New York City still contributes about a quarter of its total welfare and Medicaid costs out of its own revenues. (The Federal government supplies half the cost and the state provides the remaining quarter.) The city did not succeed in getting the state government to assume the entire non-Federal share in the early 1970's, when other major cities, such as Boston and Baltimore, managed to do so. Consequently, "welfare" was one cause of the city's persistent budget deficit. But the final report also acknowledges that welfare is not only a Federal but also a state responsibility, thus breaking with the curious reluctance of city spokesmen to turn to Albany as well as Washington for more help.

More important, the final report ultimately rejects the thesis that welfare, or any other externally mandated cost, was the main cause of the city's problem. Although 28 percent of the city's 1975 budget consisted of welfare and Medicaid, the report observes that three quarters of this was reimbursed by the state and Federal governments. Debt service, by contrast, consumed an extraordinary 15 percent of the budget, almost all of which came from local taxes; and labor costs accounted for more than 42 percent. In the words of the final report, "the enormous costs associated with compensating employees and servicing debt represent fixed but not forced expenditures. From a fiscal perspective, the issue is whether the city bargained and borrowed too much."

The commission's answer, clearly, is Yes. New York City issued debt shamelessly and extravagantly to mask the fact that its budget was hopelessly unbalanced. Short-term debt rose from $100 million in 1961 (2.3 percent of the city's total debt) to $4.5 billion in 1975 (36.9 percent of the total). Toward the end of the crisis, most of this debt was being "rolled over"—the equivalent in municipal finance of kiting a check—because no revenue had been available to back it from the day it was issued. At the same time, long-term debt for capital expenses, which can be amortized over a period of years, was being plundered to pay for annual operating expenses. By 1975, thanks to a series of amendments to the state Local Fi-

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nance Law, 53 percent of the annual capital budget, funded by bond issues, was being diverted to cover expense budget deficits. The city also practiced a less visible form of indebtedness: It failed to bring its major employees' pension funds up to a level sufficient to meet their future obligations. Even though the retirement costs that the city did pay had nearly quintupled since 1961, the "current unfunded liabilities" of these funds were calculated in 1976 to be $8.5 billion.

To accumulate a debt as massive as New York City's, more than $22 billion overall, takes persistent mismanagement. According to the final report, the most important area of this mismanagement—or rather abdication of management—was the city's bargaining with its municipal employee unions: The report criticizes City Hall for ignoring the "underlying *political* nature of bargaining" (emphasis in the original). What is meant by this phrase is that during the late 1960's the city's elected officials lost control of the collective bargaining process by relying heavily on "neutral" arbitrators, by allowing independent agencies like the Transit Authority to remain under the state rather than the city labor-relations system, and by voluntarily yielding many managerial prerogatives.

In fact, these damaging decisions were the product of political considerations of a different sort, which the final report largely ignores. Mayor John V. Lindsay, whose name is almost never mentioned, sought and obtained a confrontation with the municipal unions from his first day in office. He lost it badly, and spent the rest of his administration trying to undo the damage. Some of the city's most far-reaching concessions date to 1968, when Lindsay in effect bought union neutrality for his 1969 re-election campaign.

The final report does show what these concessions cost the city. The steep increases in municipal salaries and fringe benefits ate up the city's increase in revenues, and the loss of management control led to reduced productivity. The crunch was tightest in those areas—police, fire, and sanitation—that benefited least from rapidly increasing state and Federal aid. So in spite of its vastly expanded budget, the quality of the city's traditional services declined. In 1973, at the end of Mayor Lindsay's second term, the total number of hours worked by the police department was actually 8 percent less in the aggregate than in 1970. From 1971 to 1975, the number of workers in sanitation fell by nearly 7 percent, and in the fire department by nearly 9 percent, despite expanding payrolls.

In its second major section, the final report offers alternate projections for the city's economic future. These range from continued decline to modest growth resulting from an improved competitive position in the national economy. The gap between the high and low projections for 1985 is 540,000 jobs, and the commission emphasizes that the possible variations within this range will be determined largely by local political decisions.

Such stern talk is not often heard from the academics who study

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New York City, and it focuses attention wonderfully on the report's final section—the commission's recommendations for recovery. Given New York City's political culture, it is easy to understand why the often ponderous language of the report is nowhere more tortuous than in defining this strategy. The commission calls it "developmentalism," and its "central concept" is explained as "the need to acquire slack (uncommitted) resources and then to dedicate them for long-term investment needs rather than short-term consumption needs." Plainly stated, the commission is calling for a reduction in the present level of city services to allow for cuts in business taxes.

That this once heretical opinion is now widely accepted (if still cautiously expressed) in New York City shows the extent to which the fiscal crisis has changed the political atmosphere. Although some local academics have long resisted this conclusion, the correlation between the city-state per-capita tax burden (highest in the country) and the declining economy is too massive to ignore. The commission itself has contributed some valuable research on this question in its ninth interim report, "The Effect of Taxation on Manufacturing in New York City." Although high city and state tax levels may not be the predominant factor in decisions to relocate corporate headquarters, they have drastically depressed manufacturing, an important source of employment for New York City's unskilled labor force. The commission makes it clear that the real question is not *whether* taxes must be cut, but *how* to make such cuts possible.

From this perspective, the commission launches a surprisingly severe and effective attack on Mayor Beame's handling of the fiscal crisis. The final report labels City Hall's approach "decrementalism," perhaps giving too much theoretical underpinning to what at the time looked like a series of shortsighted expedients. In the abstract description of the final report, this strategy consisted of "marginal reform of the local political process and fundamental reform of intergovernmental relations." That is, the city blamed most of its troubles on external forces, like the welfare burden or the shift of economic power to the "Sunbelt," and it concentrated its energies on merely keeping afloat in the misguided expectation that it would be rescued by the election of a Democratic President. Or, in the words of a Midwestern banker, Mayor Beame was "punting and hoping."

The final report carefully points out the defects of this approach. After three years of Mayor Beame's Financial Plan, the fiscal 1978 budget has been balanced only by counting one-shot revenues and juggling the debt structure. For the next three years, it will again run a deficit. Efforts at improving management have concentrated on relatively uncontroversial matters of accounting and information gathering. Services like the municipal hospital system and the City University have been modestly curtailed only under the most severe outside pressure. No long-range attempt has been made to redefine the proper functions of municipal government, aside from the

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frantic and unrealistic attempt to dump all welfare and Medicaid expenses on Washington. Even if this last attempt were to succeed, argues the final report in administering the *coup de grâce* to Mayor Beame's policy, it would still not save enough money to balance the budget and make possible the needed tax reductions.

Furthermore, opportunities were frittered away to make fundamental changes in the areas where money really could be saved—personnel and management. In particular, the city's reduction in the size of its work force proved to be surprisingly ineffective at reducing labor costs. Because of union pressure (and perhaps a misplaced humanitarianism as well), the city relied primarily on attrition to reduce the number of its employees; it thereby allowed random individual decisions to determine the distribution of its cutbacks. This failure of management forced some departments to keep their employees working overtime, thus raising their labor costs. Moreover, the early retirees still received pensions and other benefits. As a result, the expenditures of the fire department, for example, declined by only 5 percent from 1975 to 1977, even though its work force was reduced by 20 percent.

According to the final report, the most vaunted personnel reform of this period, the productivity agreement of June 1976, is similarly flawed. In spite of a "wage freeze," the city agreed to pay its employees cost-of-living adjustments (COLA's) out of cash generated by improved productivity. This agreement placed a premium on the relatively few changes that would yield immediate cash savings, but provided no incentive for more fundamental steps that would improve service delivery. The city realized that such cash savings might not generate a large enough COLA to satisfy the unions, so it also agreed to draw on any newly available revenues. The result is a paper increase in productivity that might actually raise labor costs.

After having demolished Mayor Beame's policies, the commission presents an impressive list of its own proposed management reforms. These range from highly controversial recommendations such as reductions in fringe benefits to more arcane suggestions for improving the effectiveness of middle management. All told, the commission specifies potential savings in these areas of nearly $300 million a year.

It should be added that not all aspects of the report are up to the high level of its treatment of managerial questions. The final recommendations on "intergovernmental reform" come too close to special pleading to be academically respectable. Federal block grant formulas are called "inequitable" or "unfair" because they fail to maximize New York's share. The South and Southwest, with their much lower per-capita income and much higher incidence of poverty, could surely dispute that judgment. Furthermore, the report seems uncharacteristically misinformed about the nature of "regional cost of living" differences, which it cites to counter such an objection. The difference in costs between regions at the low-income level is much less important than the difference between the countryside

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and the city, and a poor family in Houston or Atlanta doesn't get much more for its money than a poor family in New York City. The report also fails to get beyond the prevailing stereotype of the black and Puerto Rican immigrant to the city by not considering the progress many of them have already made in entering the middle class.

The final chapter, on "national urban policy," is an unfortunate reversion to the standard government commission mode. It advocates sweeping measures like an urban development bank without seriously thinking them through or considering the mass of evidence presented earlier in the report that argues against such a policy. This last section seems to be the place where Horton has dumped some of the crackpot ideas of the appointed commission members.

To be sure, the report does contain much interesting material on Federal and state aid and its not always salutary effect on the New York City budget. Yet its dominant theme is that the bulk of the city's troubles originated locally and must be met by local decisions. Conversely, national policies that extrapolate from the experience of New York City may prove irrelevant to the needs of other cities, and very costly besides.

Cleaning the Air

BRUCE KOVNER

THE idea that environmental policies ought to reflect economic and political interests is not an especially popular one. Many environmentalists regard pollution as a moral problem that can be solved if only the public interest in a clean and healthful environment is given precedence over private economic interests. On the other side, many industry spokesmen (among others) regard pollution as a technical problem that can be solved if only science and industry are given time to deal with it. Both parties to the dispute assume that environmental problems can be overcome without having to balance the claims of conflicting interests or to choose among competing goals of public policy.

Neither point of view will find much comfort in *Pollution and Policy,* * a meticulous and thoughtful study of motor-vehicle pollution by two law professors, James E. Krier, of UCLA, and Edmund Ursin, of the University of San Diego. The authors trace the development of motor-vehicle pollution as a political issue in California from the early 1940's, when the problem first appeared over

* *Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940-1975,* by James E. Krier and Edmund Ursin. University of California Press. 390 pp. $15.95.

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the Los Angeles Basin, to the middle 1970's, when it afflicted scores of cities worldwide. Their account is not a story offering hope that the problem of motor-vehicle pollution will be solved quickly, or perhaps at all. It *is* a story of how the capacities of science have continually been exaggerated, while the political difficulties of imposing restrictions that inconvenience a large segment of the public have continually been underestimated. In the case of California, at least, this combination has produced a 30-year history of costly policy mistakes and disappointing environmental improvement.

ALTHOUGH visible signs of pollution appeared over Los Angeles as early as 1943, nearly 15 years passed before scientists could agree that motor vehicles were the cause. City and state officials, however, did not have the time to be so judicious. They looked around for the easiest targets and began imposing restrictions on large industrial polluters and other obvious sources of pollution, even though their contribution to the problem was unclear. But the "smog" (a misnomer in the case of California pollution, which has little to do with "smoke" and "fog") continued unabated. Having failed to solve the problem with such controls, the authorities turned their attention to cleaning up the atmosphere itself. Proposals included giant ground-based fans or fleets of helicopters to blow away the smog, and such alterations of the physical environment as tunneling through the mountains around the Los Angeles basin to allow stagnant air to escape. But these and similar suggestions were abandoned when the magnitude of the job became apparent. For instance, calculations showed that 14,000 tunnels, each 40 feet in diameter, would be needed to ventilate the city, and the output of 16 Boulder Dams, or one sixth of the entire electrical output of the United States, would be needed to power the fans.

It gradually became clear that California's air pollution would have to be controlled at its real source—the automobile. In 1960, the state enacted legislation creating a motor-vehicle pollution-control board and empowering it to establish emissions standards for automobiles, to find and certify devices that would reduce emissions, and to require their use on automobiles sold in the state. The problem, however, was that no adequate emission-control devices existed—or, at least, the authorities could not find them without years of searching and testing. According to Krier and Ursin, however, pressure from environmentalists, newspaper editorialists, and politicians (perhaps reflecting the impatience of their constituents) forced the state control board to compromise its emissions standards and certify several existing devices without further delay. But several months after the new devices had become required equipment on new cars sold in the state, the Los Angeles County Air Pollution Control Office found that 37 percent of new vehicles with fewer than 2,000 miles, 63 percent of those with more than 2,000 miles, and 85 percent of those with more than 20,000 miles were still ex-

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ceeding the state standards. Once again, the public was outraged, and the blame distributed among auto companies, environmental bureaucrats, and other plausible targets.

If the public was enthusiastic in its approval of a "technological" solution, the same could not be said of its reaction to direct regulation of automobile usage. When the state began in 1965 to require the installation of crankcase emission-control devices on *all* vehicles, the public protest *against* regulation reverberated in legislative halls. Within a month, the California legislature had passed, and the governor had signed, a bill providing that failure to install the required devices was not to be considered a crime; within six months, virtually the entire program—crankcase emission-control devices and annual inspections included—had been repealed. Krier and Ursin describe the nature of public discontent:

> It was one thing to require devices on new vehicles (or even on transfer of used vehicles), where the consumer buys a package that happens to include emission-control devices; the marginal cost is hidden and the purchaser is saved the trouble of having the device installed. . . . But when the car owner has to take steps himself to have a device installed, both trouble and expense are painfully obvious.

As more is understood about motor-vehicle pollution, however, it is becoming clear that meeting standards or, in fact, achieving any large reductions in pollution will require adjustments that are both painful and obvious. Federal motor-vehicle pollution policy, following California's example, at first tried to avoid this discomforting conclusion by relying on technological innovations—which, it was assumed, would yield the necessary discoveries in time to meet the legislative deadlines. In the case of Federal standards, it was hoped that the catalytic convertor would be able to reduce motor-vehicle emissions with little inconvenience to automobile users.

Once again, however, technology has not been so accommodating. One problem is that the convertor has proved less effective in reducing emissions than had been hoped. American automobile makers have been unable to meet Congressionally mandated standards, and they have sought and received postponements of Federal deadlines. Moreover, no one knows to what extent older convertor-equipped cars now on the road are meeting the Federal standards, but the suspicion is widespread that poor maintenance and engine tuning are substantially eliminating the hoped-for reductions. Another problem with the convertor is that reductions in emissions have been achieved at the cost of increased fuel consumption. By some estimates, California's current standards (more strict than the Federal standards) have resulted in fuel-economy losses of as much as 12 percent for this year's models alone. Still another problem worrying some scientists is that the convertor itself may constitute a health hazard, by emitting exotic substances (such as palladium

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nitrates and sulfates) that could be more dangerous than the substances the convertor was designed to control.

In any case, the perfectibility of the convertor is, in a sense, a misleading issue. Perhaps the most serious health hazards associated with automobile pollution are largely unaffected by practicable levels of emissions control. The difficulty is that any site of automobile congestion—traffic jams, toll plazas, street "canyons" (in which buildings and other structures inhibit the dispersion of pollutants)—may create levels of respirable pollution far greater than any reasonable health standard would permit (and, incidentally, far greater than the levels measured by monitoring devices normally placed well above street level). In such a situation, any reductions in emissions achieved by the catalytic convertor and other devices are overwhelmed because of the sheer number and concentration of automobiles, buses, and trucks.

It may be, therefore, that the only feasible method of substantially reducing pollution levels at these sites is to reduce the traffic congestion itself. Following this logic, E.P.A. has tried to encourage or impose traffic reductions with so-called "transportation control plans." The agency, however, has not had much success. In California, as Krier and Ursin report, attempts by E.P.A. to restrict automotive usage resulted in one defeat after another. After disapproving a state-authored control plan, analysts at E.P.A. concluded that, in addition to an armada of other controls, only severe gasoline rationing would produce compliance with Federal standards. When E.P.A. sheepishly released its plan calling for, among other things, an 82-percent reduction in gasoline consumption through rationing (wartime rationing involved less than a 33-percent reduction), the reaction in California was entirely predictable. Newspaper editorialists were indignant, politicians outraged, citizens irate. One office-seeker predicted "armed raids on gasoline stations," or quite possibly "a revolution." A chastened E.P.A. soon produced a second plan that backed away from rationing, but added regulations aimed at restricting the construction of downtown parking facilities, decreasing off-street parking, and limiting the growth of gasoline consumption. This plan also produced a storm of opposition. A third E.P.A. plan eliminated most of these restrictions; even so, the California Air Resources Board challenged the plan before a Federal court, which ruled that E.P.A. had exceeded its authority in ordering California to carry out its plan. Wearied by conflicts in California and virtually everywhere else it has tried to impose such plans, E.P.A. announced in May 1977 that it would no longer attempt to impose transportation control plans, but would rely on state and local cooperation.

The Federal effort to control motor-vehicle pollution is now, to a large extent, in disarray: Deadlines for reaching Federal standards have been postponed again and again; E.P.A.'s powers have been constrained by the courts; Congress has enacted legislation limiting the agency's freedom of action; control plans have been

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abandoned; and the principal technological brainchild, the catalytic convertor, has failed to live up to expectations. In their analysis of Federal policy, Krier and Ursin argue that many of these difficulties were to be expected, given the context of scientific uncertainty, faith in technology, and perception of crisis that characterized the debate over pollution policy.

Insofar as Krier and Ursin find a villain, it is the "technological fixation" of the American public, which, they argue, has encouraged unrealistic goals, hasty and ill-prepared regulatory policy, and economic waste. The authors do not, however, give sufficient attention to the inconsistencies of public opinion that perhaps lie behind the shape of public policy. As long as the illusion could be maintained that dramatic results in reducing air pollution were attainable without real inconvenience to their lives, the automobile-driving public could give enthusiastic and unambiguous support to extensive pollution control. When it became clear that the public itself would have to bear the costs, that enthusiasm quickly dimmed. To what extent the public is now willing to trade its convenience and its economic interests for a reduction in motor-vehicle pollution is an open question. As the shoe begins to pinch, however, the illusion that the problem of environmental pollution can be solved without painful political and economic trade-offs will become harder and harder to sustain.

The Mirage of the Welfare State

LESLIE LENKOWSKY

In his invaluable book, *The New Language of Politics*, William Safire tells of a British newspaper reader in 1951 who advised Clement Attlee to dismiss "everyone who used the term 'welfare state,' because 'nobody is very well, and the state of the fare is rotten.' " Matters may or may not have improved much in the quarter-century since, but hardly any serious public figure in Britain or elsewhere now seems to invoke "the welfare state" as a rallying cry unless he is attacking it. Almost everywhere, the term "welfare state" (popularized in 1941 by William Temple, Archbishop of York, to denote the aims of the countries allied against the "power state" of Nazi Germany) has lost its attraction, not unlike another noble ideal of the early war years, Wendell Willkie's "one world."

Everywhere, that is, except Bloomington, Indiana, where professors Norman Furniss and Timothy Tilton teach and write. In their recent book, *The Case for the Welfare State*,* they offer a new

**The Case for the Welfare State*, by Norman Furniss and Timothy Tilton. Indiana University Press. 256 pp. $14.00.

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vision of the good society, which they call the "social welfare state." They describe and justify its features, respond to criticisms from the Right and Left, and compare their ideal to the reality of Britain, Sweden, and the United States. Their aim is not only to analyze but also to persuade "strategic groups" of the merits of their case.

Unfortunately, this book will not help their cause. The authors' arguments are neither persuasive nor inspiring. Their evidence is not helpful; indeed, some of it manages to weaken their case. Most important, they seem little concerned about why an idea like that of the welfare state, which seems so attractive, has come to be so poorly regarded. Ironically and unintentionally, *The Case for the Welfare State* makes the reason quite clear.

Furniss and Tilton start by asserting that since all states intervene in social and economic life, the only important issue is how. They distinguish three categories of intervention: the "positive state," the "social security state," and the "social welfare state." In the "positive state," public policy encourages an alliance between government and business to promote economic growth. Since only those measures compatible with economic efficiency are adopted, the authors would not classify this type as a genuine welfare state. The "social security state," however, does qualify as a variety of welfare state, because its policies seek to prevent any citizen from having less than a minimum income. Nonetheless, individual incentives and rewards remain the driving forces of such a society. Not so in the "social welfare state," which the authors favor. Its programs aim to "remove important sectors of social life from the influence of the market." Moreover, land, labor, and capital would be regulated in the light of "social values." Policy and society would be more nearly united, rather than separated as in classical liberalism.

The authors want their ideal state to be judged by its goals, and unequivocally state the primary one: equality. Above all else, the "social welfare state" strives to create "a society free from class barriers, not merely at the beginning of an individual's life but throughout it." Economic efficiency, which is also valued, need not be sacrificed; instead, greater equality should open up opportunities and release unused human resources. Nor would this involve much cost to individual liberties; with regard to economic freedoms, Furniss and Tilton argue, restraints upon some people are necessary to provide rights for others. In addition, the commitment of the "social welfare state" to citizen participation in all aspects of economic and social (as well as political) life should minimize the potential for abuses. So too should the new attitude of "solidarity" that equality and shared responsibility would foster: The "social welfare state" would "aim to replace the acquisitive sentiments and exchange relations of capitalism with sympathy and fraternity, the competitive atmosphere with cooperative impulses." All this should result in a new sense of security, much desired but presumably not to be found in capitalist economies.

Although most of these goals have been shared by socialist critics,

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Furniss and Tilton maintain that theirs is not a socialist but a reformist program. The "social welfare state" does not require common ownership of the means of production or a revolutionary change in government. Radicals, they contend, have mistakenly treated transitory features of capitalism as inherent flaws: Paul Baran, for example, writing in the 1950's, wrongly concluded that economic stagnation was inevitable; likewise, James O'Connor, at the beginning of the 1970's, incorrectly diagnosed a chronic fiscal crisis in the capitalist state. Neither these defects nor others of concern to the Left have to be found in a properly designed welfare state. If only the citizenry chose to do so, the aims of socialism could be achieved without the more radical means.

Conservatives, as well, should find the "social welfare state" compatible with their own beliefs. Conservative opposition, Furniss and Tilton assert, is rooted in two myths: that man is incapable of effective social planning and that property must be inviolable. The history of recent attempts to alter social and economic conditions, the authors claim, proves that planning is difficult, but not impossible; indeed, because of the complexity of modern societies, rationality may be harder to attain for people acting independently. And compelling public purposes may override the claim to private property. The authors somewhat tendentiously argue that conservatives have, in effect, already endorsed one kind of welfare state by accepting the responsibility of government to promote equality of opportunity and by advocating measures like the negative income tax. Whether the "social welfare state" is the best alternative for Britain or the United States, according to Furniss and Tilton, is an issue of relative effectiveness, not a question of principle.

THUS *The Case for the Welfare State* ultimately must demonstrate that the kind of society favored by the authors is not a utopian fantasy. For that purpose, they offer the example of Sweden, a society they believe has attained many goals of the radical critics of capitalism, without abandoning parliamentary government or nationalizing major industries. Conservative doubts to the contrary notwithstanding, it has also managed to improve social conditions, minimize unemployment, and achieve a high standard of living. Although not quite a "social welfare state" in every respect, Sweden supposedly shows the way to creating one.

It is hard to believe that two university professors expect a country where titles of nobility still matter to be seriously regarded as a prototype of an egalitarian future. Indeed, a number of puzzling facts are to be found in their chapter on Sweden:

1. Poverty, as measured by the number of public-assistance recipients, has been increasing in recent years, "for reasons that are not clear."

2. Wealth and power are highly concentrated: About 55 percent of all Swedes lack any property, while one family, the Wallenbergs, controls firms employing 13 percent of all workers.

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3. Blue-collar workers not only have less income and property than members of other social classes, but also enjoy poorer health, nutrition, housing, educational opportunity, and political resources; only in consuming less tobacco and alcohol are the lower classes more "advantaged" than the upper classes.

4. The "workings" of the Swedish welfare state "are beyond the comprehension of most citizens."

To be sure, Furniss and Tilton also point to certain accomplishments: Swedes are better housed and healthier, for example, than they were before the advent of the welfare state. But so are the inhabitants of most industrialized countries. Sweden should certainly have something more to show for 40 years of uninterrupted social and economic planning.

Furniss and Tilton are just as unpersuasive in accounting for Swedish prosperity. The secret, they contend, is that capitalists have been able to operate more efficiently within a framework of public plans and incentives; only 15 percent of all goods and services are produced by the state. Yet this balance now seems threatened. As public pension funds have accumulated, the Swedish government has taken a larger role in investment decisions, a step whose consequences have yet to be felt. As taxes have increased, so have demands for higher wages, leading to an unprecedented incomes policy that has shaken the labor unions. As industrial subsidies and training programs have grown to take up the slack in the economy, productivity has fallen. As a result, this year, while the economies of other nations are expanding, Sweden's G.N.P. will decline for the first time since 1945. Whatever the immediate prospect, it can no longer be said that the Swedish "middle way" offers protection against the ups and downs of the business cycle.

The authors do not maintain that Sweden is perfect, only better than other countries. However, the evidence they present is confusing and incomplete. They criticize Britain, their example of a "social security state," for giving social services primarily to the poor while allowing the rest of the population to benefit only from prosperity. Britain, Furniss and Tilton suggest, would grow more rapidly if only more people took part in managing its industries. On the other hand, the United States, their model of the "positive state," is faulted for spreading its welfare efforts too broadly and for counting on economic growth to end poverty. The authors have little to say about the American economy, save noting disparagingly that it seems to benefit those who are in it. No effort is made to apply their typology to countries like West Germany, which has successfully combined social welfare and a market economy, or Italy, which has not. In short, the comparisons offered by the authors do nothing to support their claims on behalf of the "social welfare state."

In any event, their problem is not simply the lack of proof for the superiority, or even feasibility, of their ideal. More basic is their

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failure to consider seriously the role of government. For Furniss and Tilton, a welfare state, by definition, is one that promotes "individual well-being" by establishing "surrogate" forms of property to offset the allocations of the market. This necessarily involves redistributing wealth from private to public hands. Who would control this treasure, and how would it be divided? Who could be trusted to decide which liberties are to be infringed and which exercised? How could a sense of security be attained in a society with so little regard for personal property? Such questions get little attention in this book. The authors promise new forms of democratic participation, collective representation, and even ombudsmen. But in the end, we are asked to trust in the benevolence of state bureaucracies.

To an increasing extent, of course, we already do. While stopping short of outright socialism in their economic prescriptions, however, Furniss and Tilton wish to go further in other respects. For example, they are anxious about the "quality of life." In an otherwise familiar list of proposals to transform the United States into a "social welfare state," one stands out:

> *Termination of Capitalist Hegemony in the Cultural Sphere.* Personal and corporate wealth cannot be allowed sovereignty in determining the goods and services people use or the entertainments they enjoy. The particular consequences of this principle are far-reaching, but at a minimum they imply greater public scrutiny and direction of large investment decisions and the elimination of commercial advertising on radio and television.

No more soap operas and Westerns? Or is it fewer situation comedies the cultural commissars want? Furniss and Tilton say no more than that some decision should be made in the interests of promoting "individual well-being."

This is symptomatic of why the idea of the welfare state has done so badly. Too often, in the name of doing good, its champions have sought changes that seem more concerned with obtaining power for themselves to reshape society to fit their own notions. To most inhabitants of the industrialized countries, who have enjoyed reasonable prosperity since the war, such changes could hardly seem relevant to their own welfare. All things considered, it might be better to live in a society where wealth can be made and used to provide for one's own well-being, than in one where entertainment and things that matter even more depend upon the decisions of others. Though offered as statism with a human face, the welfare state has never escaped the suspicion that it might turn out to be statism nonetheless.

In practice, few people object to a society in which public policy seeks to produce greater equality, liberty, economic efficiency, citizen participation, communal harmony, and personal security—the goals set for the "social welfare state." Though they have rarely been guided by any grand design for social reconstruction, all

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the industrialized nations have been trying to achieve these aims, and in the process, have created various kinds of "surrogate" property for their citizens. The results of these efforts have not always been welcomed, and sometimes have even appeared to make these nations worse off. Particularly in recent years, skepticism about the usefulness of many government programs has been rising. Furniss and Tilton have done no service by pretending there is a wonderland in which these problems and doubts would disappear. They would have done more to advance their own objectives by realistically examining how those two words of common origin, "wealth" and "welfare," might be reconciled, instead of preparing another set of blueprints for separating them.

The Family Under Fire

CHESTER E. FINN JR.

One contemporary cliché of social policy in the United States is the deterioration of the family. Even the casual newspaper reader can scarcely help detecting that something is amiss when he notes, for example, that the majority of live births in the District of Columbia in 1975 were out of wedlock. In New York City, 33,215 illegitimate children were born in 1976—30 percent of all births that year and three times the number of babies born out of wedlock in 1956. In the Central Harlem Health District, only one infant in four was born to married parents. Moreover, the rising incidence of divorce among one's friends and acquaintances is a regular topic of conversation at upper-middle-class cocktail parties—when, that is, one can find somebody to talk to who is not in the throes of divorce proceedings.

It is not difficult to document the loosening grip of the traditional family as our basic unit of social organization. But as in other instances where a series of small, seemingly private events is perceived as adding up to a substantial public policy problem, the search for explanation leads directly to an analytic crossroads: If the family is decaying, is it the fault of individuals or society? Is the assault on the family fundamentally a private or a public act of aggression?

In their recent study of the American family,* Kenneth Keniston and the Carnegie Council on Children do not linger over such questions. They simply assert:

> There is nothing to be gained by blaming ourselves and other individuals for family changes. We need to look instead to the broader

* *All Our Children: The American Family Under Pressure,* by Kenneth Keniston and the Carnegie Council on Children. Harcourt Brace Jovanovich. 288 pp. $10.95.

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> economic and social forces that shape the experience of children and parents. Parents are not abdicating—they are being dethroned, by forces they cannot influence, much less control. . . . We must address ourselves less to the criticism and reform of parents themselves than to the criticism and reform of the institutions that sap their self-esteem and power.

The principal culprit among these harmful "institutions" is the American economy, with its unequal distribution of rewards and profits. Poverty is regarded as the source of most of the difficulties besetting parents and children, and structural features of the society that impede an escape from poverty are treated as the principal obstacles to healthy, stable families.

Any possibility of individual incapacity is rejected out of hand. "It is a slander on any child," the authors insist, "to think that he or she cannot learn the skills needed to participate effectively in society." If such learning does not take place, or fails to result in adequate remuneration, it is because of the "stacked deck" created by "the failings of our society." Hence it is folly to look to the schools alone to equip youngsters with skills, attitudes, and motivations, for they "are unsuited to the task; without economic opportunity to follow educational opportunity, the myth of equality can never become real."

THUS, one quarter of the way into this book, the "problem of the family" has been recast into a diagnosis of widespread social and economic injustice. Not surprisingly, the remedies that fill the remaining pages mainly consist of bold schemes for the redistribution of wealth and income. Nowhere is there a sustained examination of the authors' central premise that greater economic equality will foster healthier families. It is simply assumed, although its reiteration every few pages suggests some uncertainty as to whether the reader will be willing to accept it.

The authors present two primary economic prescriptions, both as simple as they are extravagant. First, the national government should assure employment for all heads of households. Second, it should rearrange the taxation and welfare systems to create an adequate income floor under all families.

The jobs program consists of fiscal and monetary policies through which the unemployment rate among family heads is to be cut to 1-1½ percent, and of public sector work for those "low-skill, low-income workers" who still cannot find jobs in the marketplace. (Although the authors disclaim any ardor for preferential hiring, they nonetheless urge that prospective employers be required "to prove, in addition to the predictive validity of [their] existing criteria, that there are no other selection mechanisms available that will serve as well or better to predict job performance, and with less discriminatory effects.") That soaring inflation may follow such stimuli is a cost we are simply advised to bear.

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Although the government would assure everyone a job, no one would be required to work, particularly if he or she would rather raise children. For those who cannot or will not work, and for those who work but do not earn much money, the authors propose a sweeping income-support scheme. The present patchwork of welfare programs is to be replaced by a single national arrangement under which every family is entitled either to cash assistance equal to 40 percent of the national median family income, or to guaranteed employment plus sufficient supplementary payments to make its total income equivalent to at least half the national median. This arrangement can most readily be achieved, the authors suggest, through a "credit income-tax system," with the credit refundable to those with small tax liability. The idea is to establish a refundable tax credit of $6,000 per year for a family of four and to couple this with a straightforward tax rate of 50 percent on all earned income. A family with no earnings would thus have $6,000 to live on. A family earning $10,000 would be "taxed" $5,000; with the $6,000 credit, it would thus qualify for a supplement of $1,000 to its income. All families with earnings below the "break-even" point of $12,000 would receive some supplement; all those above would incur a tax liability.

That this income-support scheme is an exceedingly costly proposal does not deter the authors, who calmly propose to finance it by extracting an additional $40-50 billion annually from the "pockets of people throughout the upper 25 to 30 percent of the current American income distribution." A four-person family with earnings of $30,000 would find its total Federal taxes rising from $5,800 to $9,000. At an income of $50,000, taxes would increase from $12,400 to $19,000.

In addition to proposing these new economic arrangements, Keniston and his colleagues issue a number of allied recommendations. Parents wishing to stay home and tend their children rather than take an outside job should be encouraged to do so. To this end, the terms of employment should be made more flexible to permit part-time work scheduled around the demands of child care. A wide range of Federally assisted social services should be provided to all parents and children, with "consumers' councils" monitoring their performance and setting their standards. Child health-care services should be greatly expanded, "despite the current outcry over runaway medical care costs." State and Federal laws affecting family life should be revised and elaborated. "Children's rights" should be codified to establish limits for schools, medical practitioners, and others who might otherwise infringe them. Public funds should be made available for "children's lawyers" to participate in the proliferating judicial and administrative procedures. Moreover, because of their strong presumption that a child should remain with its biological parents, the authors advocate that public or private agencies seeking to remove a child for its own protection should be made to meet far more exacting requirements than now exist in

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most states. The abuse of children at their parents' hands may be a problem, the authors acknowledge, but "even here, the abusive parent's typical isolation, frustration, and inability to cope must be viewed, at least initially, as a correctable condition if help, regular contact, and sympathy are extended."

It is an alluring vision, this society in which no one is truly accountable for his own behavior, culpable for his own shortcomings, or responsible for his own well-being. It is even more seductive because it is advanced in the name of children, who are most plausibly excused from direct responsibility for the consequences of their own actions. The great error of *All Our Children* is its refusal to expect—indeed, even to allow—those children ever to grow up into mature and responsible human beings whose actions will shape their society at least as much as they are shaped by it, and who should reasonably be urged not to have children themselves until they are able to look after them.

As the illegitimacy figures cited earlier attest, hundreds of thousands of infants are being born each year to parents who are not well situated to care for them. But nowhere in this book is there even a shred of impatience with such recklessness—not a word of admonition or rebuke. To the contrary: In a flight of misguided social relativism, the authors assert that a woman with out-of-wedlock children, or single persons of opposite sex living together, or a commune "certainly deserves to be called a family" as much as the traditional unit of two married parents and their children. Far from giving aid to the American family, Keniston and his colleagues appear to be celebrating its transformation into a hodgepodge of fleeting and often heedless domestic arrangements. Surely one can reckon with changes in the traditional family—notably the widespread practice of both parents working—without losing the distinction between families and communes!

It is their addiction to an economic explanation for family problems that numbs the authors into calm acceptance of social phenomena that might otherwise be deemed worrisome symptoms or probable causes of the very problems they decry. But if they are wrong about the link between poverty and family breakdown, the authors are probably wrong about other matters as well. Now, there certainly is a statistical relationship between low income and broken families. The Census Bureau reports that one third of all female-headed households were below the poverty line in 1976, compared to only 9 percent of all families. Nonetheless, one must ask where the evidence is that more money for the poor—and less for the rich—would lead to healthier families and better child-rearing practices. The proportion of Americans living in poverty has shrunk markedly in recent years—from 21 percent of all persons in families in 1959 to 10 percent in 1976—even as the rates of broken homes, illegitimate children, and the like have risen. Is it not therefore possible that the abolition of poverty would be associated with a fur-

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ther rise in the indices of family disorganization, as the large, Federally sponsored income-maintenance experiments in Denver and Seattle are beginning to show?

It is also puzzling that, after having spent a goodly sum of Andrew Carnegie's money on research, the authors did not make more international comparisons. Many observers have noted that the United States, by failing to provide a wide range of social programs specifically designed to support the family, is a peculiar exception among the industrial democracies of the world. Elsewhere, national family policies typically include children's allowances and other income supports much like the proposals offered by Keniston and his colleagues. Why, then, was no attempt made in *All Our Children* to appraise the efficacy of family programs in other countries? Has the enlargement of the welfare state in Britain, Scandinavia, New Zealand, or wherever, promoted more stable families and more confident, competent children?

Within the United States, the evidence we have hardly supports Keniston's thesis. Family life does not appear to be much better in states like New York and Massachusetts that, at immense cost to themselves, have established relatively humane, not to say generous, social welfare programs, than in states like Alabama and New Hampshire that are renowned for their miserliness. And if such measures as divorce rates even remotely give an indication of family health—a notion, to be sure, that the Carnegie group would not accept—then it would appear that the upper-middle class, for all its prosperity, is not faring very well either.

If economic diagnoses and remedies do not adequately address the issue of family stability, it is reasonable to ask what might, and the Carnegie Council would have performed a useful service had it crossed that analytical frontier. But its failure to do so is also illuminating: It is just possible that part of the disorganization of the American family follows from the growing acceptance of the very attitudes and assumptions that underlie this volume—an inverted liberalism that can find no fault with individual behavior and hardly anything but fault with the institutions and practices of the society at large.

CONTRARY to what Keniston and his colleagues think, the basic flaw in our welfare programs is less the inadequacy of their payment levels than their twisted priorities: In many states, children receive more generous treatment if their father abandons them than if he stays home. Children born to parents who do not want them are assured of medical care by the government, but a couple wishing to terminate an inadvertent pregnancy is denied financial assistance—though we vouchsafe the "right" to an abortion to those who can pay for it themselves.

This perverse incentive structure is reinforced by contemporary complacency about interpersonal relationships of every sort. It should not come as a surprise that social phenomena like "living

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together," homosexuality, illegitimate births, and separation and divorce are becoming more commonplace in a society that increasingly refrains from passing critical judgment on them. In a society dedicated to individual freedom there is an understandable reluctance to criticize the private lives of others. But if we are unwilling to do so, we should not wonder that we find ourselves confronting added difficulties in providing every newborn child with a secure and supportive environment.

Given these cultural and demographic forces, it is difficult to discern what a sensible public policy for families would look like. Certainly its central focus will not be income redistribution, or the creation of more publicly financed "advocates," or the codification of more freshly minted "rights," or the encouragement of additional litigation in family courts. The process of developing such a policy must start with a hard-eyed assessment of the incentives and disincentives embedded in present policies and programs. It will include an examination of the experiences of societies boasting different approaches to family policy. But above all, it must contain a self-critical appraisal of the expectations that our culture now sets for families as private social units, and of the behavioral norms we fix for couples who are likely to raise children. It would be folly to suppose, as Keniston and his colleagues do, that every sort of individual behavior is inherently laudable and that government is responsible for unquestioningly filling all the cracks in the domestic hearth.

The Supreme Court vs. the Constitution

JOHN BURLEIGH

It is no secret, at least among judicial scholars, that there is a profound and ever-widening gap between "constitutional law" (what the Justices say the Constitution means) and the Constitution itself. It should not surprise us, however, that the Justices continue piously to invoke the Constitution. The authority of nine unelected jurists to strike down laws would be unacceptable in a democratic polity, one that is supposed to be "a government of laws, not of men," unless judicial review were believed to be guided by a faithful attempt to interpret the Constitution, the highest law of the land. Consequently, to support their opinions, the Justices will ignore or even willfully misrepresent the text and history of the Constitution, rather than admit they are revising it.

By comparison, legal scholars seeking to justify "progressive" decisions that effectively amend the Constitution have generally taken a more subtle approach. Reflecting the flaccid historicism of our age, they have devised the rhetoric of the "living Constitution." Accord-

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ing to this now-familiar litany, the Constitution is an "organic law" that must be "capable of growth"; it must adapt to the "felt necessities of the times" or the "evolving morality of the tradition"; its phrases are "vague" and "malleable" and must be "creatively discerned afresh"; and thus the Court "is and must be a continuous constitutional convention in the sense that it must keep updating the original charter by reinterpretation." Such rhetoric is, of course, sand in the eyes, but it serves to perpetuate the belief that the Court's rulings do not merely express the political opinions of the Justices, but somehow derive from a mixture of the Constitution and popular consent.

Raoul Berger, the author of *Government by Judiciary*,* is one legal scholar who refuses to accept such rationalizations for the discrepancy between the Constitution and constitutional law. In his new book, Berger rebuts the prevailing notion that the Founding Fathers intended to leave it "to succeeding generations [meaning judges] to rewrite the 'living Constitution' anew." Instead, he argues, they drew an emphatic distinction between legitimate judgments about the constitutionality of laws and impermissible judgments upon their "wisdom," "policy," or "justice." As adherents of the *fixed* Constitution, the Founders regarded judicial revisions as "usurpations" of the amendment power, which the Constitution reserves to Congress and the states. They enjoined the courts to interpret the words of the Constitution as they were used and understood by its framers. Up to this point, Berger is on firm ground, both in his analysis of the Founders' conception of the proper role of the Court, and in his attack upon the propensity of modern Justices to transform totally the original meaning of the Constitution. But going beyond a sensible insistence upon adherence to the *general principles* embodied in Constitutional provisions, Berger argues that the Court must also be bound by the framers' notions regarding the *specific applications* of those principles. In short, he urges that judges uphold the "draftsman's intention" in the strictest possible fashion.

Citing the Court's massive failure to respect the understanding of the framers, Berger concludes that it has assumed the powers of a "superlegislature," powers that are "self-conferred and survive only because the American people are unaware that there is a yawning gulf between judicial professions and practice." Similar indictments by other scholars have been evaded or ignored with impunity by the Court and by the various elites that attend it. However, Raoul Berger's distinguished reputation, based on his timely and often-cited studies on impeachment and executive privilege, guarantees this work a much more respectful hearing. And indeed, *Government By Judiciary* deserves to be widely read and discussed. For, despite the extreme position taken by its author, it not only raises

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* *Government by Judiciary: The Transformation of the Fourteenth Amendment*, Harvard University Press. 483 pp. $15.00.

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all the right questions, but is also carefully documented and rigorously argued, at once learned, illuminating, and challenging.

As the subtitle of his book indicates, Berger devotes the major part of his analysis to a detailed comparison of the originally intended meaning of the 14th Amendment—the cornerstone of modern constitutional law—with the Court's "transformation" of it. On virtually every important issue, from racial desegregation to legislative reapportionment, Berger finds that the Court has flatly contradicted the expressed purposes of the Amendment's framers in the 39th Congress. The all-important first section of the 14th Amendment declares: "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*" A brief rundown of the major judicial rulings concerning these provisions will indicate how great their impact has been on American political life.

In the 1873 *Slaughterhouse Cases*, the Court interpreted the Privileges or Immunities Clause to be, in effect, a restatement of preexisting doctrines, and it has remained toothless ever since. Subsequent Courts have been much bolder with the two remaining clauses. Under the Due Process Clause, the Court has now applied almost all of the procedural requirements in Amendments II-VIII to the states. It is on this basis that the states are required to observe, for example, the Exclusionary Rule and the *Miranda* rules, which are derived from the Fourth and Fifth Amendments. Beginning in the late 19th century, the Court also extended the reach of the Due Process Clause to non-procedural matters. Under this doctrine of "substantive due process," economic regulations were struck down as violations of the "liberty of contract," the First Amendment was applied to the states, and more recently, the "right of privacy" was found lurking in what the Court called the "penumbras" of the Bill of Rights. As for the Equal Protection Clause, the most significant decisions have been *Brown v. Board of Education* and *Reynolds v. Sims*, and their respective progeny. In *Brown*, the Court struck down segregated schools, and more recently it has mandated sweeping desegregation remedies. In *Reynolds*, the Court ordered the reapportionment of the 50 state legislatures according to the principle of "one-man, one-vote," and subsequent decisions have guaranteed the right to vote and "access to the ballot" against virtually any state restrictions.

If Berger's account of the true meaning of these clauses is correct, however, then the Supreme Court has done to the 14th Amendment what the Marx Brothers did to *Il Trovatore*. Examining the debates in the 39th Congress, Berger draws the following conclusions: By "privileges or immunities," the 39th Congress meant the "fundamental rights" of security, personal liberty, locomotion, and ownership and disposition of property, rights that had been enu-

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merated in the Civil Rights Act of 1866, and that were drawn from Bushrod Washington's construction (in an 1823 Circuit Court decision) of the original Privileges and Immunities Clause in Article IV. The Equal Protection Clause was intended "to bar legislative discrimination with respect to these rights," but *not* with respect to "social" or "political" rights. Finally, the Due Process Clause was meant to guarantee that the states' "judicial machinery" would be available to secure these rights, but *not* to impose on the states Federal "codes of criminal and civil procedure."

Although limitations of space preclude a detailed analysis of Berger's account of the "original understanding," I am persuaded that, at least as regards the Equal Protection Clause, it is essentially correct. There is no question that the 39th Congress emphatically denied that the Equal Protection Clause pertained to voting. Had it thought otherwise, neither Section 2 of the 14th Amendment, enabling Congress to decrease the representation of states which denied adult males the right to vote, nor the 15th Amendment, banning denial of the vote on the basis of race, would have been necessary. Similarly, every proponent of the 14th Amendment who addressed the question of segregation and antimiscegenation laws denied they would be overturned—and each spoke to racially segregated galleries when he did so. Thus, even though state-enforced segregation might reasonably be thought to impose a debilitating stigma of inferiority upon the segregated race and thereby to deny persons "the equal protection of the laws," Berger argues that the denial by the framers of 1866 that the 14th Amendment would require desegregation or "social equality" should have precluded a judicial ruling against segregation in 1954.

THERE is, as Berger indicates, little evidence to suggest subtle "latitudinarian" intentions on the part of the 39th Congress. Yet while it may have intended to protect only those rights enumerated in the Civil Rights Act of 1866, it chose to guarantee "the equal protection of the laws," and one may ask whether the framers' specific applications of this principle require us to disregard their general formulations of the principle itself. Thaddeus Stevens, in introducing the Amendment to the House, stated that it was designed to allow Congress "to correct the unjust legislation of the States so far that the law which operates upon one shall operate equally upon all." Stevens' counterpart in the Senate, Jacob Howard, argued: "This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of person to a code not applicable to another." And while the examples of these principles cited in the Congressional debates are consistent with the narrow enumeration of rights in the Civil Rights Act, was it not the general principle of "no caste legislation," at least with respect to civil matters, that the 39th Congress adopted? Its failure simply to reproduce the language of the Civil Rights Act—which, given the prolixity and specificity of the rest of the Amendment, cannot

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plausibly be attributed to a belief that the Constitution required resonant, preambulatory phrases—suggests that the meaning of the Amendment is not exhausted by the specific applications envisaged by the 39th Congress.

Consider, for example, the framers' denial that the Equal Protection Clause would place blacks on juries. Is there any principled distinction between the right to testify in court and the right to serve on a jury? Is it not self-evident that an accused black is denied the equal protection of the laws when he is tried by a jury from which blacks have been excluded? Along similar lines, does a state not deny the equal protection of the laws when, as Klansmen rampage and black voters are intimidated and defrauded, its officials sit on their hands? Congress thought so in 1871 when it enacted penalties against such private lawlessness. Yet Berger, faithful to the framers' narrow statements (and to the Court's crabbed decision in the 1875 *Cruikshank* case), would permit Congress to correct only unequal state *laws* and to punish only *state* action, thus rendering blacks defenseless against a state's unequal enforcement of equal laws.

It is testimony to Berger's scholarly integrity that he states his thesis concerning adherence to the "draftsman's intention" in the most uncompromising fashion. Thus he forthrightly concludes that the most important case in all of constitutional law, *McCulloch v. Maryland*, in which John Marshall upheld the charter of the Second Bank of the United States, was wrongly decided. Berger does not dispute Marshall's broad understanding of the "implied powers" of Congress. Nonetheless, he argues that the decision ought to have been controlled by the fact that the Constitutional Convention, with the prospect of a bank in mind, voted against including the power to charter corporations among the enumerated powers.

Few Presidents and Congresses, let alone Supreme Courts, have ever followed this standard of uncompromising adherence to the framers' specific intentions. In *The Federalist* Number 77, Alexander Hamilton promised that the President would not be able to remove a subordinate without the consent of the Senate; yet the First Congress, in the course of establishing executive departments, decided instead that the President possessed the sole and inherent power of removal. The Founders' hostility to paper money led them to strike out the power to "emit bills of credit" from the enumerated powers in Article I, and yet the power to print it is surely implied in the Constitution's grant to Congress of commercial and monetary powers. The Founders specifically refused to authorize Congress to build canals, and yet the power to build them, along with highways and dams, would seem incontrovertible. On none of these matters did the Founders' particular views preclude later decisions based upon the broad outlines of the "necessary and proper" powers of Congress in Article I and of the political and administrative independence of the executive in Article II.

Moreover, one must wonder whether the Founders themselves

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really insisted upon as rigid and paralyzing a construction of the Constitution as Berger claims. With respect to Hamilton, for example, Berger surely overstates the case. He cites on several occasions Hamilton's warning in *The Federalist* Number 25 that "every breach of the fundamental laws . . . forms a precedent for other breaches where the same plea of necessity does not exist at all. . . ." The context of Hamilton's remark, however, is an injunction against, in the first place, "fettering the government with restrictions that cannot be observed." Similarly, Berger takes *The Federalist* Number 81 as a categorical rejection of judicial appeals to "the *spirit* of the Constitution," although a careful reading of Hamilton shows he does not reject the notion at all. Berger also disregards Hamilton's suggestion in *The Federalist* Number 78 that, even on nonconstitutional matters, the Justices might properly play a role in "mitigating the severity and confining the operation" of "unjust and partial laws."

Constitutional interpretation could not be constricted in the way Berger prescribes. A judge must attempt, in an unprejudiced and faithful manner, to locate the general purposes or the "spirit" of a constitutional provision. If the Equal Protection Clause may legitimately be understood to prohibit "caste legislation" and civil disabilities imposed upon one race, then it may properly be interpreted to strike down discriminatory juries and segregated schools, whatever the 39th Congress may have anticipated. It is a very different matter, however, for the Court to invent constitutional pretexts such as the "right of privacy," or to define "process" to mean "substance" and thereby derive the incredible doctrine of "substantive due process," or to transform the Fourteenth Amendment into a guarantee of unqualified political majoritarianism. There is simply nothing in the framers' presentation of the principles animating the 14th Amendment to support such conclusions.

It must be admitted that the search for a legitimate and workable middle ground between the "draftsman's intention," as Berger defines it, and the present notion of the "living Constitution" calls for delicate and difficult judgments that defy the precision of a mathematical proof. But modern Justices are no longer inclined to make such an effort, or to subordinate their own ideas of justice to those of the framers, and consequently it is now impossible to say that the rules they enforce derive from either the letter *or* the spirit of the law. For the present Court to lecture the other branches on the rule of law (for example, on the responsibility of a President to release pertinent evidence to a grand jury) is an anomaly that need not be belabored.

Raoul Berger has performed a great service by exposing the profound disparity between the Constitution itself and the Supreme Court's transformation of it. In the present climate of judicial license, there is little reason to fear that the excessive stringency of Berger's own canons of constitutional interpretation will have any

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damaging effects. And there is some reason to hope that wide public discussion of *Government by Judiciary* may impel the Court to reconsider the wisdom of going beyond the only legitimate basis for its extraordinary powers.

Rediscovering Rights

THOMAS PANGLE

After a long period during which academic legal and political theory was dominated by legal positivism and utilitarianism, we currently appear to be in the midst of a full-fledged revival of doctrines based upon the notion of individual rights. In recent years, both John Rawls and Robert Nozick have gained widespread public attention with theories of justice that emphasize the central importance of supra-legal rights. Now Ronald Dworkin, an American who is University Professor of Jurisprudence at Oxford, has written a book called *Taking Rights Seriously*, * which attempts to show that the British and American legal systems can best be understood and defended in terms of the idea of "natural rights."

The first (and the best) part of Dworkin's book is devoted to a critique of legal positivism—the doctrine that a legal system is constituted by rules whose legitimacy rests merely on the fact that they are properly enacted, and not on any grounding in extra-legal moral principle. Dworkin insists that, contrary to the positivist view, a legal system cannot be understood in terms of rules alone: It must also be seen as pervaded by and rooted in "principles," whose nature renders impossible a strict separation between a community's law and its notions of basic fairness and individual rights.

Some "principles" are general, like those embodied in the Bill of Rights, while others are more narrow, like the prohibition on contracts that "unreasonably" restrain trade. Principles differ from rules in several important respects: They require more indirect and prudential application; they are subject not to exceptions but rather to being weighed against other principles; they do not necessarily owe their legitimacy to enactment or explicit acceptance; and they are always subject to being contested. The significance of principles emerges most clearly when one examines how a judge reasons in "hard cases" where no law or precedent obtains. Through a sensitive description of this process, Dworkin demonstrates that judges do not merely exercise "discretion" but instead follow a specific chain of reasoning: They try to ascend in coherent fashion from the issues in a particular case to the fundamental purposes underly-

* *Taking Rights Seriously*, by Ronald Dworkin. Harvard University Press. 290 pp. $12.00.

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ing the historical development of the various levels of the legal system—from common law to statute and finally to the purposes behind the Constitution itself.

Once one has seen through the spurious simplicity of positivism and rediscovered that moral principles underlie the law, the real task emerges: trying to determine what those principles are. Since Dworkin maintains that principles arise from our system's "institutional history," he might be expected to embark upon this task by directing his attention to the most reflective and wide-ranging opinions of our great judges. From these he would inevitably be led back to the debates that attended the birth of the Constitution and, eventually, to the comprehensive and competing political philosophies—classical, Christian, and modern—which guided the thought of the Founders. However, despite a perfunctory bow to the need for some philosophic-historical research, Dworkin quickly repairs instead to a rather watered-down version of the currently fashionable and avowedly unhistorical theorizing of John Rawls.

Adopting Rawls' method, Dworkin asserts that we can discover the political morality underlying the Anglo-American tradition through a process of reflection that proceeds from our own immediate moral reactions to the "construction" of general principles that give a structured basis to these reactions. By repeatedly moving from our "intuitive" reactions to our tentative principles, and then back again to examine our "intuitions," we finally arrive at a state of "reflective equilibrium." This is a state in which we have a systematic justification for our own intuitions that brings them into coherence with the intuitions of other members of our culture. Any intuitions that can't be made to conform to the systematized "moral sense" of contemporary Anglo-American culture must be rejected as moral errors.

In the course of this reflective process we illuminate the bearing of our moral sense by gradually constructing an abstract model of men in their relations to one another as moral persons (the "original position"). We thus discover that as moral beings men are equal, self-regarding, and concerned not with any goals or excellences but only with securing for themselves the means—safety, respect, power, and wealth—that might be useful in the pursuit of any goal they may come to have. A moral community and contractual moral obligations arise from the collective pursuit of selfish interests. The source of all moral principles is the equal rights or claims each individual has against every other individual: These are what Dworkin rather preposterously calls "natural" rights, in splendid disregard of the fact that he has arrived at them through a reflective process that never steps beyond the conventional horizon of contemporary culture. In order to establish that these rights are "natural" in any meaningful sense of the term, Dworkin would of course have to offer some evidence that they are intrinsic to man as man and not merely part of a deeply-instilled structure of prejudices possessed

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by human beings living in a particular historical epoch. This he never attempts to do.

Before the model of the "original position" can have much effect on actual politics and law, some more precise definition and rank ordering of the so-called "natural" rights is obviously required. But Dworkin, brushing aside Rawls' complicated struggles with this question, is content to posit as fundamental the "highly abstract" right to "equal concern and respect," without ever bothering to give a precise definition of what this warm and comforting phrase might mean.

By relying on Rawls, Dworkin can save himself much troublesome research and thought while claiming an enviably strong moral grounding for his views. He propounds a code of justice that purports to be sanctioned by the American Constitution and even nature itself. Yet the account of human rights Dworkin offers turns out to be little more than a convoluted ideology supporting precisely those reactions to current policy issues that a conventional liberal academician is likely to have.

THE notion of rights embodied in the authentic sources of the American tradition (the Declaration of Independence and *Federalist Papers*) implies that men are equal insofar as they have an equal right to personal safety and to the free use of their "diverse and unequal" capacities for acquiring property and for pursuing their own conception of happiness. It was clearly understood that these general rights, along with the more specific civil, economic, and political rights that flow from them and are needed to implement them, strictly limit what government may do. Dworkin frequently gives earnest assent to this doctrine. In fact, he is eager to enlarge the scope of rights and liberties that fit his tastes, like conscientious objection to the draft or the right to commit civil disobedience without penalty. When waxing enthusiastic about the kinds of individual freedom he likes, Dworkin even goes so far as to assert that "our" moral principles "prohibit" policy decisions reached by counting any preferences that are not strictly individualistic (i.e., self-regarding). From his discussion of these matters, it appears that Dworkin's argument has led him to endow some of his favorite rights with an anarchistic absoluteness that would paralyse civil society.

But this does not stop Dworkin from seeking to curtail drastically rights he finds distasteful—in particular, property rights. Moreover, he seems dedicated to the elimination of any possibility that liberty or individual rights might be an obstacle to governmentally coerced progress toward equality of condition. Whenever he encounters some conflict between the rights of individuals and the sort of egalitarian welfare policy he favors, his authoritative account of "our" understanding of rights shows that the rights must yield to the policy.

Dworkin achieves this moral confirmation of all his policy pref-

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erences by appealing to the vague "right to equal concern and respect" that he has constructed as the foundation of all rights. It turns out that this basic right does not necessarily entail the "right to equal treatment" or to "the same distribution of opportunities as anyone else has"; in fact equality of opportunity "holds only in special circumstances." What, then, does the "right to equal concern and respect" signify? It requires that an "individual's interests be treated as fully and sympathetically as the interests of any others"—but "we must be careful not to overstate what that means." It means only that "those who will be injured" may not "simply be ignored" in the "calculation" deciding "whether the general interest is served." "Individual rights to distinct liberties must be recognized only when this fundamental right [to equal concern and respect] can be shown to require these rights."

This statement of the nature of our rights would seem to permit the crudest utilitarian disregard for individual liberties. Dworkin confirms this impression in his subsequent discussion of what he calls "Ideal" policy arguments. Policies supported by "Ideal" arguments are those that promote any non-utilitarian vision of society. Dworkin holds that such government-endorsed idealism cannot justify the abridgement of individual rights *if* the ideal the government appeals to is "itself controversial within the community." There is, however, one ideal that is allegedly *not* controversial—the ideal of "a more equal society." (This is necessarily the case, according to Dworkin, since the only shared basis for our moral principles is the fundamental natural right to "equal concern and respect.") From this ideal it supposedly follows that "the argument that a more equal society is a better society does not deny anyone's right to be treated as an equal." Therefore, any policy that contributes to realizing the ideal of a more equal society has a nearly unimpeachable moral claim, before which the derivative right to equality of opportunity must yield. Dworkin employs this line of reasoning to justify reverse discrimination, but it could just as well be used to justify a program of eugenic engineering.

In the early parts of his book Dworkin claims to be seeking the "settled principles" and "basic purposes" of the Constitution. But midway through he admits that he does not regard the Founding Fathers' "conception of fairness" as in any way authoritative: What is important is that they charge future citizens "with the responsibility of developing and applying their own conception of fairness." When he is being most candid, Dworkin shows that what he aims at is no more than a systematic account of his personal conception of fairness and his own policy preferences as a conforming liberal professor of the 1970's. The University Professor of Jurisprudence at Oxford surely has as much right as anyone else to offer the public his own opinions on these important matters. One might expect, however, that he would not so cavalierly dress up his own opinions as "natural rights," or call the culture-bound process by which he arrives at them "philosophy."

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From Candidate to President

SUZANNE WEAVER

THE 1976 Presidential campaign has already generated its fair share of quick history books, and at the present time there is special reason for turning our attention to these volumes: Perhaps an account of the Carter campaign may furnish some clues to explain the unnervingly false start that President Carter made during his first year in office.

Whether or not the President recovers, it can hardly be denied that his fortunes had sunk very low in the autumn of 1977. By the end of Jimmy Carter's first session with the U.S. Congress, his "approval" rating had already plummeted below 50 percent in one national poll. His difficulties had been given the stamp of reality by the national news magazines, and speculating about what had gone wrong became an obligatory assignment for syndicated columnists. In fact, the administration's troubles were so widely broadcast that a journalistic subindustry quickly sprang up to argue that no President's problems could possibly be so bad so early in the game as President Carter's seemed to be.

All the talk wasn't just another creation of journalists afflicted by their Watergate-fed lust after Presidential misery. Throughout the 1977 Congressional session the administration's policy initiatives had indeed been failing. Welfare reform was stalled in a distinctly unimpressed Senate Finance Committee. The Carter energy program had suffered severe reverses, and the administration's reputation had been badly damaged in the process. The President had wasted some of his scarce resources on proposals that didn't exactly go to the heart of the nation's needs—ideas like Election Day registration and the citizens'-rate postage stamp. He had lost OMB Director Bert Lance to financial scandal, with the very special humiliation that episode implied for a President who had made such special claims to probity. On the foreign policy front, his openings to the Third World had not yet borne perceptible fruit; he faced strong opposition on the Panama Canal Treaty, and an almost sure fight on the outcome of the SALT talks; and his joint Soviet-American statement on the Mideast had provoked domestic reactions ranging from puzzlement to outrage.

Moreover, a wide range of observers was expressing considerable dismay at the general quality of the White House staff operation. "Second-rate" was one of the more frequent and kinder adjectives used to describe its performance; and as John Osborne of *The New Republic* remarked, the new Carter White House seemed "a strangely *dull* place." To be sure, none of the President's early troubles were irremediable, and some of them undoubtedly would have beset any new administration; yet there was reason to believe that the Carter team didn't have a particularly marked capacity for self-

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correction, and that recovery wasn't going to come either quickly or easily.

These troubles had befallen a President who is smart, who is decent, and who is working at his job with exemplary energy and devotion to the public interest. In that sense his early dilemmas are not so much an indictment as a puzzle. So it seems natural to ask of the 1976 campaign books: Is there something in the process that brought Jimmy Carter to office that would help us to understand his administration's first-year problems?

ANYONE who sets out to mine the 1976 campaign books for answers to that question has to face the prospect of a good deal of boredom in the course of the enterprise. There's very little in them, about the campaign or the Carter personality, that a media consumer didn't have pressed on him—repeatedly—throughout the day-to-day coverage of the campaign. But these books do present a remarkably consistent view of the origins of Carter's Presidency. The most important and informative of them is Jules Witcover's *Marathon*.[1] As a *Washington Post* correspondent, Witcover put in his full share of wearying hours on the Carter campaign planes and buses. "Marathon" is in fact precisely the word not only for his own and his fellow journalists' travail, but for his view of modern Presidential politics—and, it must be said, for what a reader goes through in trying to complete the 656 pages of his tome. Just about everything seems to be in Witcover's book, reported with clarity and an apparently high degree of accuracy.

Witcover describes the new and distinctive mode of Presidential campaign politics that had emerged by the 1970's—with primary following primary in a numbing rhythm, with the campaign centralization and the reliance on media promoted by the campaign finance reforms, and with the highly personal organizations that have finally become a settled fact of Presidential candidacies. And what he finds in all this is a kind of desert. At the very beginning of his book, Witcover tells us just how bleak this political landscape came to appear to him: "There ought to be," he muses, "something inspiring about a free nation of more than 200 million electing their leader." But given the nature of the selection process, "it is not surprising that the national consciousness and the national interest also are bruised and even crippled en route, until a great disenchantment approaching bitterness blankets the public attitude toward the whole punishing business." Elaborating upon this theme, Witcover devotes his first chapter to describing the 1976 election as "the ultimate media event." And in fact his book as a whole presents Jimmy Carter's triumph as due most of all to plain stamina and a superior skill at media management.

Certainly there is nothing particularly inspiring in Witcover's

[1] *Marathon: the Pursuit of the Presidency, 1972-1976,* by Jules Witcover. Viking. 656 pp. $14.95.

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story of how the man who was to become President made his decision to seek the office. It was observing the early stages of the 1972 Presidential campaign that first gave then-Governor Jimmy Carter and his staff the notion that they themselves could actually make the Presidential run. During that time, several of the Presidential candidates passed through Atlanta and visited at the Governor's mansion. It wasn't that these candidates imparted to the Georgia Governor any special sense of excitement about the possibilities of American politics; on the contrary, Jimmy Carter was encouraged to run for President precisely because he found these men to be such very ordinary mortals, certainly not clearly superior to himself.

At least one key member of the Carter staff drew the same lesson from these visits. Jody Powell learned that all Presidential campaign organizations, including the "well-oiled machines" of media myth, were actually pretty chaotic on the inside. The Governor and his aide took the lesson of Everyman: If he can do it, so can I.

And of course they were right. If Carter's decision to run wasn't an inspiring exercise to contemplate, neither, Witcover argues, were the performances of his Democratic opponents in 1976. There was no declared candidate in the early going who had the basic broad appeal, the technical skill, and the simple persistence to give Jimmy Carter a proper race under the political conditions of 1976, when new rules and their consequences had forced candidates to run everywhere and appeal everywhere at once, and when the political terrain's old landmarks and natural resting places had crumbled. By running hard for a media-magnified victory in the early Iowa caucuses, and then simply trying to run everywhere after that, Jimmy Carter was able to get far enough ahead so that neither Hubert Humphrey nor Jerry Brown had time to catch up later on.

The general election campaign in the fall presented the Carter group with a much tougher challenge—indeed, a nearly fatal one; but it certainly didn't give Witcover new evidence that Jimmy Carter had much in the way of political vision or capacity for governing. The general election campaign (which occupies only six of the 43 chapters of the book) seems to have been without any truly engaging drama, let alone a clear significance for the political future of the country as a whole. Witcover concedes that the press may have been partly to blame for this: It did concentrate its reporting on trivial matters like Carter's *Playboy* interview and Ford's Eastern Europe gaffe. But Witcover also argues convincingly that this time around it was not the press but the candidates themselves who were the principal source of the frivolousness and generally low tone of the proceedings.

In the end, Jimmy Carter triumphed, but as Witcover concludes, "the result was hardly a rousing endorsement and certainly not the 'wide-ranging success among the electorate' that he had said before Labor Day was crucial to him to deal effectively as President with Congress. Blacks, Protestants, Southerners of both races bailed him

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out." Moreover, Carter's election represented no affirmation of any coherent political leaning in the country. Not an unnatural result, certainly, of a selection process that has become, in Witcover's words, a "debilitating and degrading obstacle course."

A very different kind of book about the 1976 elections is Kandy Stroud's *How Jimmy Won*,[2] a combination biography of the candidate and chronological history of the campaign. Here one is dealing with an author who can write: "Around Christmas, 1971, I was reading *Nicholas and Alexandra*, a very inspiring book about the czar. Nicholas was a very popular czar even though he was a great oppressor. He had a great feeling for what Russia was all about. And it reminded me of Carter because Carter understands the mood of this country more than anyone I've seen." Stroud wants very much to like her candidate, and begins her book by placing him in the line of succession to Robert Kennedy: "Like Robert Kennedy, he became a new kind of liberal, leapfrogging over the old liberalism he thought to be obsolete, unworkable, divisive." Sometimes she speaks of Jimmy Carter in what can only be called the hagiographic mode: "He relinquished his career on the water and thrust himself into the tilling of earth. And the seeds of his Christian faith, which had fallen on fallow ground, flowered as did his spirit and concern for others. In the land he found himself and his purpose. He directed his search for power to the service of mankind."

What is interesting about Stroud's book, though, is that the Jimmy Carter her narrative presents is no more attractive than Witcover's. ("I have never heard him say anything genuinely funny," Stroud recalls for starters.) The supporting characters—including the candidate's mother "Miz Lillian" and his wife Rosalynn—don't come across very well either. Most important, Stroud portrays Carter campaign staffers whose ambitions were fueled by resentment. At the 1972 Democratic convention, they made Jimmy Carter's bid for the vice presidency and were treated as ludicrous amateurs by the McGovern forces. That was when they decided to aim for higher office. "If those schmucks can do it, Jimmy can do it," Carter media expert Jerry Rafshoon remembered thinking in 1972.

Stroud does discern genuine political idealism in campaign advisers Eizenstat and Lipshutz. As for most of the rest, the only political virtue she sees in them is a kind of tactical shrewdness. She attributes Jimmy Carter's eventual victory to this kind of shrewdness, to the candidate's energy, and to the "free time" that allowed him to devote his undivided attention to the early stages of his campaign. But as regards other possible political meanings in his election, she can only conclude that he offered "not so much promises as promise." He was "something for everybody—and something different."

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[2] *How Jimmy Won: the Victory Campaign from Plains to the White House*, by Kandy Stroud. William Morrow & Co. 442 pp. $10.95.

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Like Witcover, Stroud cannot establish any link between the Carter victory and an identifiable set of national concerns.

Vic Gold, in his book *PR as in President,*[3] presents an even bleaker picture of the campaign: By 1976, he argues, changes in the Federal campaign spending laws had severely limited the money available for paid political advertising, and thus had placed an unprecedented premium on the free news coverage generated by media events. The result was the most public-relations-oriented campaign in our history, and the media, despite the adversary stance of many of their reporters, became active conspirators in the attempt to create the kind of political drama that would serve the purposes of the press as well as the candidates. This arrangement served only further to impoverish our politics and to fuel the national cynicism about American politicians.

Gold's book consists of a series of vignettes to illustrate how Presidential politics, always a manipulative exercise, had by 1976 become shamelessly so. He writes of political professionals who no longer bothered to hide the techniques and calculations behind their management, of "anonymous" campaign aides who had come to crave publicity for themselves, of political camps so unaccustomed to speaking any language but the language of strategy that they were no longer capable of keeping strategic secrets. He sees a politics that was finally paralyzed by too much information and too much scheming. As an almost perfect symbol, the sound system for the first televised Presidential debate failed for 27 minutes, and the nation was thereupon treated to the sight of two candidates for the leadership of the free world standing speechless and wooden behind their lecterns for the whole time. It was a tribute, Gold notes, to all the aides' having overlearned the lessons of Marshall McLuhan: Any gesture at all under the circumstances, they had been taught, might be perceived as a sign of weakness. And so, of course, we got no motion at all.

These skills of manipulation were the ones that Jimmy Carter mastered, and they enabled him to win a campaign that had been reduced to little more than a game of strategy. It used to be the case that the candidates themselves generally restricted their public remarks to the issues, and resisted the attempts of newsmen to dwell upon the "horse race" aspects of the campaign. But in 1976, as Gold points out, candidate Carter himself would answer every question that reporters directed to him on matters of campaign planning and calculations. As for Carter's substantive political message, Gold recalls that Carter supporter Midge Costanza once remarked admiringly of her candidate, "He's a conservative to conservatives, a moderate to moderates, a liberal to liberals. Jimmy Carter has believability."

In light of the distinct lack of charm that observers find in the Presidential politics of 1976, it is not surprising that the most ap-

[3] *PR as in President,* by Vic Gold. Doubleday. 251 pp. $8.50.

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pealing book about the campaign is hardly about politics at all. Richard Reeves' *Convention*[4] was apparently planned when it still looked as if the Democratic Party would be divided enough at the time of its New York City convention to produce a truly dramatic fight. Instead, when the event finally came to pass and the delegates arrived, it was clear that the race was already sewed up. So Reeves' book seeks and finds much of its drama in a series of smaller personal quests and contests for which the convention provided a backdrop and arena.

Along the way, we do get some glimpses of the Carter camp. Some of its staffers make plans to bug all the in-air communications in Madison Square Garden before they're told that they can't do that sort of thing in the post-Watergate climate. Jody Powell and Pat Caddell sample a reception provided by the *New York Times* and remark, "Remember one thing: If we lose by five votes, these people will never invite us back." On its final night, the convention is treated to a campaign film by the Carter people designed, as Reeves puts it, "to make Jimmy Carter a more likable man than he was." Reeves' account reveals a fairly interesting and even attractive America on display at the Democratic convention, but the Carter operation surely does not come across as one of the more appealing parts of it.

REFLECTING on the accomplishments of John F. Kennedy's campaign as of Election Day in 1960, Theodore H. White wrote that, win or lose, "along the road, over the past year and to this point, he had somehow stirred every nerve end of the American political system, and that system would never be the same." Now, 16 years later, White has decided for the first time since he began his "Making of the President" series that he is not going to write about this past election for us, at least not in the high reportorial mode he made famous. And now also, instead of the large political meanings that White found in the campaign of John Kennedy, we are presented with Witcover's view of Presidential politics as a "debilitating obstacle course," and we read about candidates and aides who seem to stand for nothing more than the sum of their strategic calculations. What has happened in between?

Part of the change undoubtedly comes from differences in authorial skills and temperaments. Theodore White, throughout his years of campaign reporting and even through his book on Watergate, exhibited not so much a sympathy for each of the politicians he examined as a sense that they and their travails represented broader concerns in the country as a whole. This sense, which ennobled even the lowest of the men White wrote about, is almost wholly missing from the current crop of books. Their authors fail to make such connections in any sustained way, and the candidates they describe are accordingly diminished.

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[4] *Convention*, by Richard Reeves. Harcourt Brace Jovanovich. 246 pp. $10.00.

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Yet even if these authors had been more inclined toward White's brand of larger thematic investigations, they would probably have found very little that was ennobling in the 1976 campaign. When one thinks of larger lessons to be drawn from this election, several things come to mind. We saw how anxious the country had become for a high affirmation of its own idealism and worth—and how little it had to settle for in terms of the coherence of that affirmation. We learned what kind of force the national Democratic Party had become, as it poured its views into the candidacy of Jimmy Carter with increasing success after the primaries, nearly cost him the election because of them, and left him saddled with a set of policy prescriptions that have given him almost nothing but grief since his inauguration.

Finally, we observed the cumulative consequences of party and electoral reform. In one way or another, the changes of recent years have been aimed at making it easier for outsiders to win in national politics, and by now they have substantially succeeded. So what we got this time around—what the reporters saw, and what they recoiled from—was a crew of outsiders *par excellence*. They were outsiders, certainly, to the craft of national governance; but more fundamentally, they were strangers to those experiences and affiliations and pieces of history that turn political ambition into something not only more purposeful but also more humane and worthy of respect.

It is no accident that the delegates to the Democratic national convention seemed warmest to Jimmy Carter when, on the night after his nomination, he opened his speech to them with the line he had delivered so often and to so much skepticism during the campaign: "Hello. My name is Jimmy Carter and I'm running for President." It was the success of that intensely personal and seemingly quixotic quest that was most moving, and not any sense of what broader political meanings it might have encompassed. Perhaps it is not so puzzling, then, that such a candidate—and the men who helped bring him to power—should now be encountering such extraordinary difficulties, or finding it so hard to connect the kind of mandate a modern Presidential campaign can give with the kind of consent needed to govern.

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REVIEWERS

RICHARD B. MANCKE is Associate Professor of International Economic Relations at the Fletcher School of Law and Diplomacy at Tufts, and author of *The Failure of U.S. Energy Policy* (Columbia University Press).

ABRAM N. SHULSKY is a Senate staff aide. He was formerly on the professional staff of the Center for Naval Analyses.

DIANE RAVITCH is Adjunct Assistant Professor of History and Education at Teachers College, Columbia University, and author of *The Revisionists Revised: A Critique of the Radical Attack on Education* (forthcoming from Basic Books).

EUGENE BARDACH is Associate Professor of Public Policy at the University of California, Berkeley, and author of *The Implementation Game: What Happens After a Bill Becomes a Law* (MIT Press).

MARC F. PLATTNER, a research associate at the Twentieth Century Fund, is Consulting Editor of *The Public Interest.*

JAMES RING ADAMS, an editorial and feature writer on the editorial page of *The Wall Street Journal,* has written extensively on the problems of New York City.

BRUCE KOVNER has been a consultant to state and Federal agencies on environmental problems; he is presently at work on a study of pollution control as an issue in city politics.

LESLIE LENKOWSKY is Director of Research at the Smith Richardson Foundation.

CHESTER E. FINN JR. is the author of *Education and the Presidency* (D.C. Heath). Until recently, he was on the staff of the Brookings Institution; he is now a legislative assistant to Senator Daniel P. Moynihan, working on issues of welfare and family policy.

JOHN BURLEIGH teaches government at the University of Virginia.

THOMAS PANGLE is Associate Professor of Political Science at Yale, and author of *Montesquieu's Philosophy of Liberalism* (University of Chicago Press).

SUZANNE WEAVER, Assistant Professor of Political Science at Yale, writes editorials for *The Wall Street Journal.* She is the author of *Decision to Prosecute: Organization and Public Policy in the Anti-Trust Division* (MIT Press).

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